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**Vol. VI**  
**TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1940**

**No. 537**

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**FASHION ORIGINATORS' GUILD OF AMERICA,  
INC., ET AL., PETITIONERS,**

*vs.*

**FEDERAL TRADE COMMISSION**

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**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE SECOND CIRCUIT**

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**PETITION FOR CERTIORARI FILED OCTOBER 31, 1940.**

**CERTIORARI GRANTED NOVEMBER 25, 1940.**

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Room 901, 45 Broadway,  
New York, N. Y.,  
December 7, 1936.

Met, pursuant to adjournment, 10 A. M.

Before: EDWARD M. AVERILL, *Examiner*.

(Same Appearances.)

PROCEEDINGS.

Examiner Averill: Gentlemen, you may proceed.

11834

JOHN BLOCK resumed the stand and testified further as follows:

*Cross-examination (continued) by Mr. Albert.*

Q. Mr. Block, you have testified, I believe, that the A.M.C., while not technically a member of the A.B.O., was present at substantially all its conferences and represented and took an actual part in its activities? A. There was a representative of the A.M.C. present I would say at most of our meetings and conferences.

*By Mr. Albert.*

11835

Q. Was that representative usually Mr. Bergdahl? A. I would say in most cases, sometimes others.

Q. By reason of Mr. Bergdahl being present at those A.B.O. conferences, or, I might say, at those at which you were also present, was it not true that you had many discussions with him with reference to the activities of the Fashion Originators' Guild of America, Inc.? A. Yes, sir.

11836

*John Block—For Commission—Resumed—Cross.*

Q. Is not that also true particularly from the first time that you heard of the Fashion Originators' Guild of America? A. I do not understand the question.

Q. Is it not also true practically from the first time that you heard of the Fashion Originators' Guild of America? A. That is right.

Q. I believe, Mr. Block, that you testified that you first heard of the inclusion of the \$10.75 dress manufacturers, loosely speaking, in the Guild, in June of 1935.

Mr. Haycraft: I object to that. The witness identified exhibits as early as March.

11837 A. I cannot say as to the dates, but the records will show.

Examiner Averill: The witness' answer clarifies the situation. Proceed.

*By Mr. Albert.*

Q. Well, in the light of Mr. Haycraft's remark, would you say that the first time that you had heard of the inclusion of the \$10.75 manufacturers was in March, 1935?

A. I do not know. The first time I heard about it when was the \$10.75 dress manufacturers formed the \$10.75 dress guild, and announced it either in "Women's Wear," or some similar publication. I believe it was "Women's Wear." And, just around the same time, just about the same time, it was taken up with us—that is, the A.B.O.—by Mr. Post and Mr. Reinitz at a meeting.

11838

Q. Are you distinguishing, in your remarks, between the time when the \$10.75 dress manufacturers were technically admitted to the Guild, and the time when the first inclusion of the \$10.75 dress manufacturers was first discussed—do you understand the question? A. Yes, I understand the question. Yes, I believe that is the point you

asked me, if I understood when I first heard of this \$10.75 guild and its proposed affiliation with the Fashion Originators' Guild of America?

Q. Well, let me put the question this way: When was the inclusion of the \$10.75 dress manufacturers first discussed, to your knowledge, or suggested? A. Do you mean as far as the A.B.O. is concerned?

Q. And as far as the Fashion Originators' Guild of America is concerned, rather. A. I do not remember whether my first knowledge came from an advertisement in "Women's Wear," or whether it was brought out at a regular A.B.O. meeting. I do not know which was first.

Q. Did you have anything to do with the suggestion, let me say, of taking in the \$10.75 manufacturers?

11840

Mr. Haycraft: That is objected to. There is no foundation laid for that question. There is nothing to show that there was any suggestion ever made.

Examiner Averill: The witness can say so. Objection overruled.

Mr. Haycraft: Exception.

Examiner Averill: Noted.

A. I would like to hear the question.

Examiner Averill: Read the question.

(Question read.)

A. Whose suggestion? The Guild's suggestion?

11841

By Mr. Albert.

Q. Let me put the question this way: Did you at any time advocate the taking into the Guild of the \$10.75 manufacturers prior to their actual inclusion? A. Possibly.

Q. In other words, you do not recall? A. I am not certain.

Q. Let me refresh your recollection. A. Yes.

11842

*John Block—For Commission—Kusumea—Cross.**By Mr. Albert.*

Q. Did you ever make the following statement in January, 1934: "The Fashion Originators' Guild of America is expected by retailers to broaden the base of membership so that manufacturers of more popular priced lines of dresses and goods be included, and this should be accompanied by taking in various associations down as low as the \$10.75 market." A. Yes. Possibly I did.

Q. Well, now, do you not recall as a matter of fact that you did make such a statement, Mr. Block? A. I do not know. How can I definitely recall it? I see you are reading from something. Tell me about it.

11843

Q. This is an interview to a representative of "Women's Wear," and appears in "Women's Wear" for January 17, 1934. That is what I read to you from. A. I would like to see it.

Q. I would be glad to show it to you.

(Counsel shows document to the witness.)

Q. You may recollect that you were shown that before you went on the stand——

Mr. Haycraft: By Counsel for the Respondent?

Mr. Albert: If you will just let me finish.

*By Mr. Albert.*

11844

Q. —by Counsel for the Respondent. Have you got the place there, Mr. Block? A. I just want to see what the occasion was.

Q. This point here. A. Yes.

Q. And this is another reference here. A. Yes.

Q. All right. A. Yes, but that was not made to a reporter for "Women's Wear." That was at an association of the Retail Dry Goods Association.

Q. But you did make that statement, did you not? A. Yes, sir.

Q. That was made to a group of representatives of the N.R.D.G.A. A. The N.R.D.G.A., at which Mr—

Q. Did you also at that time make the following statement: "If the above recommendations would be incorporated and carried through in the program of the Fashion Originators' Guild of America, then the Guild would undoubtedly have a still more enthusiastic and active support from every retailer in the country."? A. Read that again, please.

Q. "If the above recommendations would be incorporated and carried through in the program of the Fashion Originators' Guild of America, then the Guild would undoubtedly have a still more enthusiastic and active support from every retailer in the country." A. Possibly. I do not know whether those are my exact words.

11846

Q. Is that not the substance of what you stated? A. I cannot be certain. It is reported that way, and possibly I said exactly that, or possibly it was a little different. I do not remember now.

Q. Did you also say the following— A. Excuse me, but these hearings—at these hearings there was a stenotypist present, and why do you not refer to his records, that would give you the exact words.

Q. As a matter of fact, Mr. Block, is that stenotypic record of what was said given to a "Women's Wear" reporter? A. I do not know whether the "Women's Wear" reporter gets it or not. The "Women's Wear" reporter is there himself.

11847

Q. Yes. A. What I told the "Women's Wear" reporter—that is, whether the "Women's Wear" reporter took it down himself, the "Women's Wear" reporter is there at the meeting and they may take their own notes.

Q. From this, did you ever disavow—that is, from that time down until today—did you ever disavow the statements that appeared in "Women's Wear"? A. Not to my knowledge.

11848

*John Block—For Commission—Resume—Cross.*

Q. Did you also say the following: "There is no question that the ruthless copying of style has been greatly reduced. My guess is that it has been reduced by almost 70 per cent, which is good considering that the Guild agreements for the most part were only signed last season."? A. I probably did.

11849

Q. Did you also say this: "These store executives"—or, rather, referring to a conversation that you had with the store executives which is reported above, but which is not quite material here—"These store executives advise me that the mark-downs in his store"—just let me get this straight now: "This same executive advise me that the mark-downs in his store on dresses from \$16.95 to \$39.75 are 25 per cent. less than for the same 5 months' period of the year before—by 25 per cent."? A. That is quite likely.

Q. Mr. Block, in order that we may fully understand each other, and so that it may be apparent for the record what I am going to ask you in my subsequent questions, and why I am going to ask you these subsequent questions, let me ask you this: You have no fault to find, have you, with the F.O.G.A. plan to eliminate style piracy in so far as it applies to the medium priced and better priced dresses, have you? A. No, I believe their aim is a very worthy one, but it has to be made practical in order to be effective, and in order that retailers as a whole agree on its points so as to have an accord—

11850

Q. Will you be good enough, please, to answer my question? A. I am trying. I thought you wanted me to tell you what was in my mind.

Q. I will get that out. A. All right.

Q. Is the reason for your acquiescence in the F.O.G.A. plan in the medium priced and lower priced dresses the fact that you believe that style piracy is unethical? A. Yes, sir.

Q. And of course the business and policies of Kirby, Block & Company and its members is predicated on doing an ethical business, is it not? A. Correct.

Q. And the obtaining of a profit unethically is something that Kirby, Block & Company and its members have no interest in at all; is that so? A. I would like to qualify my answer.

Q. Answer it any way you please. A. That answer is yes, providing you do not set up an advantage for the other fellow which will act as a boomerang against yourself; in other words, the retailers want to be ethical, but he does not want a club to be handed to the other retailer to hit him with.

Q. May I interpret, or do I understand your answer as meaning that Kirby, Block & Company and its members are satisfied to resort to what they believe to be unethical practices if they are used by others? A. That is not my answer.

Q. Would you be good enough to clarify it, please? A. Just read my answer.

Q. Does your language mean, or am I to understand if your competitor uses a club, you want to use a club also, do you? A. No, we just do not want—the retailer just does not want to be clubbed and have nothing to say about it.

*By Mr. Albert.*

Q. I will repeat my question to you: You say in your letter of January 13, 1936, being Commission's Exhibit No. 944: "If the last mentioned group was under complete control there probably would be very little to worry about." In referring to "control," do you mean that "control" attempted to be exercised by the Guild in the medium priced field and the better priced lines?

Examiner Averill: I do not think there is any objection to that.

11854

*John Block—For Commission—Resumed—Cross.*

A. If I might have the letter I probably might be able to tell you better what it means. He is just taking out a little part of it, and I do not know just what it refers to.

Examiner Averill: Show the witness the letter.  
(The witness was shown the letter.)

Examiner Averill: The letter to which Counsel has just referred, and from which he is quoting, is a letter in evidence as Commission's Exhibit 944.

A. That is right. I was referring to the chain stores, as the paragraph above shows.

11855

*By Mr. Albert.*

Q. What did you mean by "control"? What type of control were you referring to, or what mechanics of control were you referring to? A. Chain store control.

Q. What type of control over chain stores did you think would be complete when you wrote that in your letter? A. The Fashion Originators' Guild of America has stated at various times that eventually they would control the chain store buying of popular priced merchandise in so far as copying styles were concerned.

Q. Yes. A. That is the control I referred to.

Q. Well, now, let me see if I can put it in a different way.

11856

Mr. Haycraft: What is the matter with that?

Mr. Albert: Please, Mr. Haycraft.

Examiner Averill: Go ahead.

*By Mr. Albert.*

Q. Since you differentiate in your letter between retailers generally and those who are in the chain store business, is it your testimony that retailers other than those in the chain store business are under control in so far as anti-style piracy is concerned? A. Not exactly.

Q. Are you in favor of the control presently exercised by the Fashion Originators' Guild of America, Inc., over such retailers? A. Which retailers?

Q. Other than chain stores. A. Provided they also get in the chains, yes.

Q. What investigation have you made, Mr. Block, of the number of copies of F.O.G.A. members' originals sold by these chain stores, if any, to warrant that opinion?

Mr. Haycraft: I object to the use of the word "originals"; has not been defined in this case.

Examiner Averill: I think it is clear. Objection overruled if the witness knows.

A. One does not have to make any special or specific investigations if one just goes around to the manufacturers' showrooms—I refer to those that are generally known as copyists, and he will find that a great number of their best garments are sold to and a great part of their business comes from chain stores; that is exactly what the chain store is selling.

Q. Is it not a matter of fact that there is practically only one large chain store organization whose competition you are referring to? A. No.

Q. What are the others? Name some of them. A. Yes, I will name some of them.

Q. All right. A. In addition to Lerner's shops.

Q. That is one that I was referring to mentally, and you were able to answer it without my saying it? A. I presume. I do not know. You should have been.

Q. Quite right, and I was, yes. A. In addition to the Lerner's shops, there are Grayson's, Wilbur Rogers, Zucca's Stores, Sally Shops, Darling Shops and many others that I can mention the names of if you want me to, but I do not recall them.

11860

*John Block—For Commission—Resumed—Cross.*

Q. Would you be surprised to learn, Mr. Block, that these chain stores sell a very small percentage of copies in your stores with comparison to the total stock of their stores? A. I would.

Q. You would? A. Indeed.

Q. Do I understand you correctly to state that you have made no actual investigation of the number of copies sold in chain stores? A. Right.

Q. Speaking of the functions of Kirby, Block & Company, one of the functions of Kirby, Block & Company is to increase the potential profits of its member stores; is that so? A. Well, maintain or increase them as the case might be.

11861

Q. In the performance of its duties, Kirby, Block & Company signed the declaration of co-operation with the Fashion Originators Guild of America, did they not? A. It did.

Q. No one of the members of Kirby, Block & Company that signed a declaration of co-operation with the Fashion Originators Guild of America have withdrawn that co-operation at any time, have they? A. So far as I know, no.

Q. Are not the advantages obtained by a retailer in handling originals purchased by him protected greater than any claimed disadvantage testified to by you in the competition of chain stores in the lower-priced brackets?

11862

A. It all depends on the type of retailer and the type of store that he has. In the case of a store like Bergdorf-Goodman and Sachs Fifth Avenue, the answer would be yes. In the case of a store like Macy's or Gimbel's, or Aronold Constable, the answer will be no.

Q. Will you be good enough to answer my question in the light of your experience with Kirby, Block & Fischer, and not in an assumed criticism of Bergdorf-Goodman's and Sachs Fifth Avenue and Macy's, Gimbel's, or Arnold

Constable's with whose businesses you cannot know from the inside as you know your own in the light of your contact with them in the industry?

Mr. Haycraft: I object. That is improper.

Examiner Averill: Obviously sustained.

Mr. Albert: Exception.

Examiner Averill: Noted.

*By Mr. Albert.*

Q. Directing your attention specifically to the members of Kirby, Block & Company, will you be good enough to answer the question? A. The answer will be no, taken as an average, taking the stores as an average.

11864

Q. In the medium and better-priced dress lines, are your stores, your member stores, under any disadvantage in co-operating with the Guild? Referring to and leaving aside for the moment the question of the low-end dresses? A. No.

Q. Is not the program of anti-style piracy a benefit to your member stores in the medium and better-priced dresses? Again leaving aside for the moment the question of low-end dresses. A. Yes.

Q. You said that in broadening the base, using language, of the Guild plan against anti-style piracy, the co-operating dealers are at a disadvantage in the low-end merchandise with their chain store competition; is that so? A. Right.

11865

Q. Does not the benefit received by your co-operating retailers exceed the disadvantages, if any, that you say they are under in the low-priced end?

Mr. Haycraft: That is objected to as already having been answered.

The Witness: I would like to answer the question.

11866

*John Block—For Commission—Resumed—Cross.*

Examiner Averill: I will let the witness answer it. The witness says he wants to.

A. In the large majority of cases, no; in a few cases, yes.

*By Mr. Albert.*

Q. Upon what do you predicate that opinion? A. It depends upon the type of store. If a store handles only fine merchandise, the answer is yes; if they handle medium and lower grade merchandise, the answer is no.

11867 Q. If they handle only fine and better class merchandise, there is no problem for them in so far as low-end merchandise is concerned; is that so? A. There is, too, because occasionally they have budget shops and so forth even though it is a fine store, and those budget shops, while it may be a small part of the business as a whole, it is essential, nevertheless.

Q. Earlier in the morning, I called, and in fact quoted to you a statement that the percentage of mark-downs in a particular store of dresses \$16.95 had decreased in the first five months of the Guild's plan approximately 25 per cent. A. Yes.

Q. I believe, if I am not wrong, and if I am in error correct me, I believe that you stated that that was correct? A. I stated that I was so told.

11868 Q. From your experience in Kirby, Block & Company, and with your member stores, have you found that the percentage of mark-downs has substantially decreased in your medium-priced and better-priced dresses since the inception of the Fashion Originators Guild of America plan against the style piracy? A. I believe it has decreased somewhat, how substantially, I do not know.

Q. Have you compiled any statistics whatsoever to show how much that decrease has been? A. I have not.

Q. Have any of your member stores done so? A. Possibly.

Q. Have you received a report on it? A. No, sir.

Q. Have you any records whatsoever in your offices showing the amount of the decrease? A. No, sir.

Q. Have you compiled any statistics whatsoever to show the amount of loss, if any, sustained by co-operating retailers in being not permitted to sell a copy of a dress in the low-end price lines? A. I have no statistics on that subject.

Q. You, of course, recognize, Mr. Block, that the curbing of style piracy in the low-end field would be a benefit to the industry, do you not? A. Only providing that it applied to all stores and not to any special groups.

Q. Yes. So that if the Guild program of anti-style piracy could be extended to and applied in the low-end field in the same way as it is in the medium-priced and popular-priced—in the medium and better-priced field, you would be in hearty accord therewith? A. Do you refer to retailers or manufacturers when you speak of fields?

11870

Q. Both. A. Yes.

Q. Mr. Block, I think, in giving the list of chain stores from whose competition your members suffered from the fact that they were not co-operating, you mentioned Wilbur Rogers? A. Yes, sir.

Q. You mentioned the Sally Shops? A. Yes.

Q. You mentioned the Darling Shops? A. Yes.

Q. What others did you mention? A. It is on the record.

11871

Q. Would you mind mentioning one or two others, if you can. A. Read my answer. That will give you the names. Why should I tax my memory?

Q. Has your memory been severely taxed thus far?

Examiner Averill: Gentlemen, let us go on. The state of his memory will be shown by his answers.

11872 *John Block—For Commission—Resumed—Cross.*

*By Mr. Albert.*

Q. Mr. Block, did you not as a matter of fact say, or do you not as a matter of fact, know, rather— A. What is that?

Q. Mr. Block, do you not as a matter of fact know that the Sally Stores are co-operating retailers? A. I do not.

Q. Do you not know, as a matter of fact, that the Darling Stores are co-operating retailers?

Mr. Haycraft: I object as not being a fact of record.

Examiner Averill: He is asking him if he knows, and if he does not know he can say so.

11873

A. I do not know.

*By Mr. Albert.*

Q. Yet, despite the fact that you obviously, since you do not know that the Sally Stores and the Darling Stores are co-operating retailers, that you obviously have made, Mr. Block, have made no investigation of what chain stores are or are not co-operating retailers of whom you say you are hampered by their competition in the low-end field? A. When we speak on that subject you must remember that there are thousands of stores that handle cheaper merchandise who are not in chains, and who do not sign up or have not signed up with the Guild, and who do not handle the better type of dresses, and those stores are also in competition with our stores.

11874

Q. Those stores cannot get better-priced merchandise, can they? A. No.

Q. They cannot get medium-priced merchandise, can they? A. I do not know what you mean by medium-priced. Do you mean \$10 and \$16?

Q. Yes. A. They can get some.

Q. But not enough to warrant them being considered as real competitors? A. For their needs, they can, because that is the smaller part of their business.

*By Examiner Averill.*

Q. When you say they cannot get that merchandise, was that because they cannot get the merchandise, or because of the range of their business? A. No, I presume the attorney means that these manufacturers being members of the \$10.75 or \$16.75 Guilds, these retailers cannot get that merchandise, but there are some who are not in the guilds and they can get some.

Q. I thought you were talking about those who are not in the Guild. A. Yes. Retailers that handled popular-priced merchandise.

Q. They cannot get the higher-priced goods? A. No, not from Guild members.

Examiner Averill: The way the answer read, it was not clear.

Mr. Haycraft: That is just the point, Mr. Examiner.

Examiner Averill: I want to know why they cannot.

Mr. Haycraft: He answered that they were not members of the Guild and therefore could not get it.

*By Mr. Albert.*

Q. Mr. Block, you have particularly enumerated, previously, certain chain stores and specialty shops—in answer to a question of mine—who were not bound by the rules of the Fashion Originators Guild of America, and whose competition you found to be a disadvantage to your member stores, and to further identify those stores they are the ones to which you said you did not wish to fur-

11878

*John Block—For Commission—Resumed—Cross.*

ther tax your memory, or why should you tax your memory; now, have you made any specific investigation whatsoever to determine whether or not these named stores are or are not co-operating with the Guild? A. These main stores?

Q. No, these named stores are or are not co-operating with the Guild?

Examiner Averill: Now, to just what stores do you refer in that question?

Mr. Albert: The ones that he specifically named before.

11879

Examiner Averill: I know that, but I wanted to show that they are chain stores because this is too far back. That is all I wanted to do, establish the nature of the stores that he is referring to, whether they are chain stores, specialty shops, or what not?

A. If you are asking me not to mention names, I will tell you generally that is the opinion in the market—the opinion in the market is that they are not,

*By Mr. Albert.*

Q. Aside from the opinion in the market, you have no other knowledge of whether or not they are co-operating with the Guild? A. Correct.

11880

Q. Based upon that type of research and investigation, it is that you predicate your opinion that their competition is disadvantage to you in the lower-priced market?

A. It is upon that type of testimony; namely, what I got from the wholesale market, plus the testimony that I got from retailers that I am contact with.

Q. Mr. Block, in your capacity with Kirby, Block & Company, have you any knowledge, roughly speaking—I am not seeking to impugn any specific, technical knowledge to you—have you any rough knowledge of the per-

centage of profit that the low-end manufacturers make upon their dresses? A. It depends on the year, they have some bad years and some good years, sometimes.

Q. Now, you have testified, Mr. Block, that for a certain period of time it was understood that in the low-end merchandise, in the enforcement of the Guild plan of anti-style piracy, retail co-operating stores were under conditions to return not more than 3 per cent. of the copies found in their basements and under certain conditions not more than 5 per cent.; is that correct? A. Not exactly. I said, I spoke of 5 per cent. for the basement or 3 per cent. for the dress department, as a whole.

Q. From your knowledge of the industry, would you not say that if in addition to the normal returns for other reasons that the manufacturer gets for the dresses that he sells, there are in addition to that 5 per cent. of his total sales returned to him than that return of 5 per cent. would mean the difference to him of a profit or a loss upon his sales? A. It would undoubtedly affect his profits, but I am not prepared to state right now to what extent.

11882

Q. Very well, Mr. Block. State the fact, Mr. Block, as to when you first learned of the Fashion Originators Guild of America and first had your conferences with Mr. Rentner, and specifically calling your attention to the discussions that then arose as to the inclusion or non-inclusion of the low-end merchandise in the Guild plan? Will you be good enough to tell us what it is in substance with Mr. Rentner said? A. Well, the discussion took some time.

11883

Q. I believe you said two or three hours? A. Probably two or three hours. At the conclusion of the meeting, and, in fact, the statement made by Mr. Rentner was the statement that brought the conclusion was substantially this—that we will not regard dresses costing \$6.75 and under as copies.

Q. Well, can you more particularly, rather than giving us the conclusion, tell us what was said by Mr. Rentner?

11884

*John Block—For Commission—Resumed—Cross.*

Do you understand the difference that I am trying to make? A. Yes. You want to know what?

Q. You have told us just what your conclusion is from what Mr. Rentner said. Now, can you tell us what it was that Mr. Rentner said? A. Well, he said a lot.

Q. Yes. A. I do not remember just all the things he said, but the whole meeting seemed to revolve around or on the question as to what the position the average retailer, the average independently owned store would be in if the lower-priced dresses—namely, \$6.75 and under—and they were so-called copies—would be available only to chains and cheaper stores and not to those who subscribed to the Guild plan. That was the entire argument of the afternoon.

Q. Well, at that time there were not as many manufacturing members of the Guild as there are to-day, were there? A. That is correct.

Q. At that time when the Guild was first formed, most of the members of the Guild manufactured dresses at \$22.75 and up, perhaps a few at \$16.75; is that so? A. That is correct.

Q. At that time the bulk of the copying of the Guild dresses was done at a price range from \$10.75 to \$16.75 retail price; is that so? A. Well, to be exact, I would say \$16.95 to—well, beginning at \$10.95 and going up to \$16.95.

11886

Q. Yes. A. Yes.

Q. Now, as a matter of fact, Mr. Block, at that stage in the development of the Guild plan, and at that stage in the consideration of the problem of eliminating style piracy, was it not the expressed thought that a dress at that time selling for less than \$10.75—a price list at that time below \$10.75 and the price list, I might say at that time, below \$10.75 immediately dropped, I believe, to below \$6.75—was not considered a copy of a dress selling for \$22.75 and above; is that the fact? A. I would say \$16.75 and above.

Q. Is it not in that sense at that stage of the development of the Guild plan that you referred to as the agreement that dresses costing \$6.75 and under were not to be within the purview of the Guild plan? A. What is the question?

Q. (Question read.) A. I cannot say as to whether that was the sense or not. I only know what was said.

Q. Is that not what was said and is that not the point upon which you predicated that statement that dresses \$6.75 and under were not to be within the purview of the Guild plan? A. I know what was said. I do not understand the question.

Q. Did not Mr. Rentner and the discussion itself, for that matter, concern itself with the fact that at that stage of the Guild development, at that embryonic stage of the development of the theory of eliminating style piracy, it was considered by all present that the spread between the price wholesale of \$16.75 and above, and you have stated that there were only a few manufacturers at \$16.75 and above, and most of them ranged from \$22 up, that a dress selling below \$6.75 at that period under the Guild plan would not be considered a copy of a dress of the manufacturers who were then members of the Guild? A. Nothing was said as to any stage or stages.

Q. What was the sense of the statement? A. We are all living to-day. We are not concerned with yesterday or to-morrow. We are talking about to-day's affairs.

Q. You will not deny that that was the topic of conversation of those three hours, of this three-hour meeting as I have roughly included it in my question? A. What was the topic?

Q. Have you not been listening to the questions? A. I certainly have.

Q. Let me refresh it for the third time.

Examiner Averill: Please, just tell him what the topic was and go on from that.

11890

*John Block—For Commission—Resumed—Cross.*

The Witness: I am talking of one topic and he is speaking of another topic.

Examiner Averill: That is what I want you to do, I want to get you together on that.

*By Mr. Albert.*

11891

Q. Was not the topic of discussion at that original inception, practically, of the Fashion Originators Guild of America, the following: That most of the members of the Guild, manufacturers, with few exceptions at that time, manufactured wholesale price \$22.75 dresses and above, thought that the spread at retail of the wholesale price of dresses which would sell below \$6.75, \$6.75 and below, and the price that the \$22.75 wholesale dress would sell for at that time was so great that it would not be considered at that time that a copy of a \$22.75 wholesale dress being sold at below \$6.75 would be within the purview of the Guild plan; is that clear? A. Very clear.

Q. What is the answer? A. That might have been the conclusion, but it was not the topic.

Q. Then you would not deny that it was the conclusion, let me put it that way. A. I have told you what Mr. Rentner, at the conclusion of that meeting, said.

Q. Well, you just made the statement that that might have been the conclusion, but that was not the topic. A. Yes.

11892

Q. Will you then say that you will not deny that that might have been the conclusion of what was said at that time? A. It might have been.

Q. Now, Mr. Block, one further question. A. Yes.

Q. Mr. Block, was Mr. Bergdahl present at that conference? A. I believe he was, yes.

Q. That was freely discussed, was it not? A. Very freely discussed.

Q. Was there anything secret about it? A. No.

Q. There was nothing secret about it, was there? A. Not a thing; no, sir; nothing was secret.

Q. And the provision of not considering anything below \$6.75 a copy was applicable to everybody in the industry at that time who were retailing co-operators; is that so? A. Yes—you mean \$6.75 and anything that was below \$6.75?

Q. Yes. A. In other words, \$6.75 and under?

Q. Yes. A. I cannot swear as to that. We had these meetings there, and I am not sure that the result of the meetings were made public.

Q. But the conclusions and the provisions with respect to the non-inclusion of \$6.75 and under copies was considered to be applicable to all of those who were present at that meeting; is that so? A. That is right.

11894

Q. And at least in the beginning of the Guild plan, none of your member stores who co-operated returned anything under \$6.75; is that so? A. What is the question?

Q. At least in the beginning of the Guild plan, Mr. Block, no one of your member stores who co-operated returned anything in the way of a dress or other garment under \$6.75 wholesale; is that true? A. Returned anything costing \$6.75 or under? I believe so.

Q. Yes? A. Yes.

Q. Now, Mr. Block, you have testified that a change occurred in the Guild plan with respect to the inclusion of dresses under \$6.75 in the Guild plan against style piracy, have you not? A. I mean \$6.75 and under.

Q. And when I say \$6.75 I mean "and under." A. When you say "under \$6.75," they made them also \$3.75; you see at that time there was not much below \$6.75 until it hit the \$3.75 level.

11895

Q. Yes. A. Now, what is your question?

Q. Let me phrase it this way, originally \$6.75 and under were not within the purview of the Guild plan, according to your testimony? A. Yes.

11896 *J. Block—For Commission—Resumed—Cross—Redirect.*

Q. Subsequently, it was decided that \$6.75 and under were to be included within the Guild plan; that is so, is it not? A. Yes, sir.

Q. You also testified that when \$6.75 and under were to be considered within the Guild plan, there was to be leniency in the enforcement of that provision; is that so? A. That is so.

Mr. Haycraft: I would like to hear the question read.

(Question and answer read.)

*By Mr. Albert.*

11897

Q. Did you discuss that with Mr. Bergdahl? A. I believe it was discussed at a meeting of the A.B.O. generally, and Mr. Bergdahl was present at that meeting.

Q. Was it the general consensus of opinion that leniency should be exercised in the enforcement of this plan including \$6.75 and under? A. Yes, sir.

Q. As a matter of fact, this leniency was discussed and advocated by both Mr. Bergdahl and Mr. Post; is that so? A. Yes, that is so.

11898

Q. And was not the purpose of this leniency in order to permit the market to adjust itself? A. The purpose of this leniency was in order to permit the market to adjust itself, and also in order to give the Fashion Originators Guild of America an opportunity to bring in the non-signatory stores.

Mr. Albert: That is all.

*Redirect examination by Mr. Haycraft.*

Q. Was there any specific limit, time limit, put upon the leniency you just referred to? A. No, not that I remember.

Q. Was there any time limit put on the statement made by Mr. Rentner as to the inclusion of \$6.75 cost garments, and under, at the time of the general meeting in 1933? A. No time limit.

Q. No time limit? A. No time limit.

Q. You were asked the question "That was freely discussed"; referring to that June, 1933, meeting. What was freely discussed? What did you mean in your answer? A. The question as to the inclusion of dresses costing \$6.75 and under, and the anti-piracy plan of the Fashion Originators Guild of America.

Q. Was there anything said by Mr. Rentner at that meeting, as to the— A. What?

11900

Q. I will withdraw that. A. Yes.

Q. In your answer a few moments in referring to the disadvantage to the department stores having basement stores and economy shops selling dresses in the lower brackets, you said that in addition to the chain stores referred to in your testimony there were thousands of shops throughout the country that were selling cheap merchandise that were not co-operating with the Guild. Do you remember that? A. That is right. I remember right.

Q. Then you were asked by counsel for the respondent as to whether those shops could get Guild merchandise. A. That is right.

Q. I will ask you to state for the record whether or not these shops that you referred to were and are a substantial factor in the merchandising of ladies' and women's— ladies' and misses' ready-to-wear garments?

11901

Mr. Albert: That is objected to as improper re-direct examination, and no foundation whatsoever has been laid showing the ability of Mr. Block to give an opinion upon that matter, and he has not even attempted to justify that; he has not even attempted, in fact, to testify that he knew about it.

11902

*John Block—For Commission—Resumed—Redirect.*

Examiner Averill: I will overrule the objection; exception for counsel.

The Witness: What is the question?

Q. (Question read.) A. Are you referring to independently owned specialty stores that are non-signatories?

*By Mr. Haycraft.*

Q. Yes. A. I would say that they are a substantial part of the retailing industry and ladies' and misses' ready-to-wear in the popular-priced lines.

Q. In popular-priced lines, what price ranges would you include? A. Well, I would say from \$16.95 retail, down all the way down to maybe \$2.88.

Q. \$16.95 retail would be about \$10.75 wholesale? A. Yes, women's and misses', most of the goods in the range from \$7.95 retail down.

Q. What, in your opinion, and based upon your experience, would be the percentage of the total number of garments sold by retail dealers throughout the United States that would be sold in those lower brackets which you have indicated as compared to your total?

Mr. Feldman: In those specialty shops?

Mr. Martin: No, go ahead.

A. I believe it was shown during the N.R.A.

11904

Mr. Albert: That is objected to. The witness was asked as to his opinion and not what was done by anyone else.

Examiner Averill: You can give us your opinion, but do not quote what somebody else said.

Mr. Albert: If the witness knows what his opinion—if the witness has an opinion on that—

The Witness: He will give you his opinion.

By Mr. Haycraft.

Q. Proceed and answer the question. A. I will say between 80 per cent. and 85 per cent. of the number of dresses sold throughout the country are in the group costing \$6.75 at wholesale, and under.

Examiner Averill: How much, costing how much?

The Witness: \$6.75 wholesale.

Mr. Albert: That is objected to, and I ask that the answer be stricken as not responsive.

Mr. Haycraft: It certainly is responsive.

Mr. Albert: It certainly is not responsive.

Examiner Averill: I think it was. I think it absolutely was responsive.

11906

Mr. Albert: May we have the question again?

(Question read.)

Examiner Averill: My ruling is the same. Exception noted to counsel.

By Mr. Haycraft.

Q. What is your estimate, in your opinion, of the proportion of that volume of \$6.75 and under that is sold by retail shops including chain stores and the small shops that you have referred to that are not signatories to the Guild program?

Mr. Feldman: I do not think the question is intelligible.

11907

Mr. Albert: I object on the ground the question is not intelligible.

Examiner Averill: I do not think that I understand it, either, but if the witness can answer it, he may.

A. I would not care to venture a figure, but I would say a very substantial proportion, if I understand the question.

11908

*John Block—For Commission—Resumed—Redirect.*

Mr. Feldman: "Substantial" is a word which may mean anything from 2 per cent. to 70 per cent.

Examiner Averill: When you say "very substantial"—can you give us a little better idea of that?

*By Mr. Haycraft.*

Q. Can you give us a little better estimate of that, Mr.

Examiner Averill: I would like to know if you can give us any figure that would indicate what you think by "very substantial"; that is what I am trying to get at.

11909

The Witness: No, I would not care to hazard a guess as to the exact percentages of the volume of \$6.75 and under dresses that is sold by retail shops, including chain stores and the smaller shops non-signatories to the Guild program, that I referred to a moment ago.

*By Mr. Haycraft.*

Q. Would you care to say whether it was more or less—that is, more dresses sold by non-signatories than sold by signatories of the Guild program? A. It would be very difficult to say offhand.

11910

Q. Now, when you said that these independent shops and non-chain stores, but non-signatory shops, could not get these higher-priced merchandise—that is, \$16.95 cost and up—what did you have in mind, and what did you mean by that? A. Well, I meant that they could not get it from any of the Guild manufacturers.

Q. What about other available sources of supply at \$16.95 and up. A. They could get it from non-Guild members.

Q. From your experience, is there a substantial group of manufacturers in those higher brackets? A. Large manufacturers? Which manufacturers do you refer to?

Q. \$16.95, outside of the Guild. A. No, no—

Examiner Averill: Do you mean—

By Mr. Haycraft.

Q. What percentage, in your opinion, of the manufacturers from \$16.95 and up are members of the Guild?

Mr. Feldman: If you know.

A. Almost all the well-known houses.

Q. What percentage, in your opinion, of the manufacturers of dresses \$10.75 and up are members of the Guild?

A. I do not know as to the percentage, but I would say that the large majority of the very important—the large majority of the more important resources in that price group.

11912

Q. Are members of the Guild? A. Yes. That is the Guild affiliate of \$10.75—the \$10.75 Guild.

Q. You mean the Dress Creators' League? A. Yes, the Dress Creators' League.

By Examiner Averill.

Q. From your understanding—let me understand one thing, please, Mr. Block. A. Yes.

Q. Are there groups of manufacturers who do not manufacture dresses that sell for less than the—which wholesale for less than \$16.75? A. Yes, sir, they do..

Q. Now, then, that group, as I would understand your testimony, does not manufacture goods or dresses that sell at wholesale for \$10.75; is that the way it is? Are they devoted to the separate lines and are they divided that way in the manufacture of dresses? A. Well, it changes, your Honor, it changes. To-day we find some manufacturers that will make \$10.75 dresses as well as \$16.75, whereas a few years ago, a few years ago they did not and then a few years back again they did, so that it

11913

11914

*John Block—For Commission—Resumed—Redirect.*

varies from time to time according to the demand for the better or for the cheaper merchandise, but there are manufacturers to-day who manufacture dresses at \$16.75 and also lower and there are also manufacturers who make dresses costing \$10.75, \$12.75, \$14.75 and sometimes even \$16.75. There is no set rule, but generally they do something like this, as a rule; that is, a manufacturer who manufactures dresses below \$10.75 also includes in his manufacturing enterprise dresses at \$6.75 and lower, so what I mean is there is no distinction in the group in some places whereas there is in others. For instance, there is a distinction in the group, one group that manufactures dresses in the \$3.75 group and lets his activities stay in that particular group and then another one manufactures in the \$6.75.

11915

Q. In other words, if I get your statement clearly, this thing is divided up on the basis of manufacturers who stick, more or less, to certain price lines and devote themselves exclusively to it; that is, to take your own illustration, the manufacturer who manufactures dresses below \$10.75 also includes in his manufacturing efforts dresses at \$6.75 and lower. In other words, would you say there is a distinction in the group, one group manufacturing say \$3.75 and under, and another group that manufactures \$6.75 and less and still another group that manufactures \$10.75 and another one at the higher brackets, and does it hold true all the way down?

11916

Mr. Haycraft: I would suggest that the witness go into that in detail and just give you how the market stands at the present time.

The Witness: I am trying to do that. I will try to make it a little clearer if it is desired.

Examiner Averill: I wish you would.

A. I think I can get at what your Honor wants to get at by making it in a simpler form. The line of demarka-

tion as to prices is more prominent and sharp in the lower brackets than it is \$16.75 and up. In other words, a manufacturer may make dresses costing \$16.75, \$22.75 and \$29.75, whereas the manufacturer who makes \$6.75's or \$4.75's or \$3.75's usually confines himself to one price line, particularly the largest resources in the lower-priced group. On the other hand the man who makes from \$16.75, \$22.75, \$29.75 will sometimes go even higher than that in his line. That depends upon materials and things of that sort.

*By Mr. Haycraft.*

Q. In the lower brackets such as \$3.75, \$4.75, \$6.75, that is where they have mass production, is it? A. Their system is to have one price line and mass production. 11918

Q. Whereas the higher lines, they are not the same type of manufacture? A. No, the higher brackets handle goods which they price according to the price of material that they have to put into the garments and they do get in various qualities so that the buyers when they come into the showroom of one of the better class manufacturers make their selections with a little more variety and they can get the finer goods and this was particularly true of the Guild manufacturers that a buyer might buy dresses costing from \$22.75 up to \$59.75.

Mr. Haycraft: Does that answer your question, Mr. Examiner?

11919

Examiner Averill: I believe now that it was brought out before, but it was not as clear then as it is now. I think it is rather definitely established by the testimony of the witness than in the higher-priced bracket that the manufacturer may carry several price lines, whereas in the lower price brackets the manufacturers ordinarily confine themselves to one price line and go in for mass production. Go ahead.

11920 *John Block—For Commission—Resumed—Redirect.*

*By Mr. Haycraft.*

Q. At the time that the Guild program was first presented to the buying offices generally at the meeting of June, 1933—at the June, 1933 meeting, what were the recognized price lines wholesale that were being sold in this market at that time? A. 1933?

Q. Yes. A. Principally, I will take up the lower grade goods first; \$3.75, \$6.75, \$10.75 and a few \$12.75, very few, \$16.75, \$22.75 and then upwards.

Q. As time went on, were there new lines of merchandise brought out? A. As time went on other price lines became more prominent, particularly \$4.75 and then there developed a demand for \$7.75 and \$8.75. There also got around, or cropped up a number of manufacturers making very sightly dresses costing \$2.25.

Mr. Albert: You mean that they were sights, or that they were fashionable?

Examiner Averill: I think the word is rather clear in that connection.

*By Mr. Haycraft.*

Q. Do you mean that they were attractive dresses? A. What is the question?

Q. (Question read.) A. I do not understand.

Q. Do you mean by—"sightly" that they were very attractive? A. Yes, sir.

11922 Q. And that they sold in large quantities? A. Yes, they sold in large quantities, very large quantities.

Q. All these lines that they had they were manufactured in large quantities and in mass production; that is, \$4.75, \$7.75, \$8.75, \$2.25— A. Largely the \$4.75's.

Q.—what was the situation with respect to the sale of garments alleged to be copies of merchandise, higher-priced merchandise, in these lines that you refer to, for

instance, take the \$3.75 and the \$6.75 that you refer to, what was the situation that you referred to? A. With respect to what?

Q. \$3.75 and \$7.75. A. What do you mean? Situation?

Q. Do they manufacture garments which were considered in the trade as being copies, or reproductions or adaptations of higher-priced garments? A. Mostly copies or adaptations and sometimes their own designs where they had designers.

Q. The problem that you retailers had then was the problem of returning to such manufacturers garments that were claimed to be copies of Guild merchandise? A. You mean later on?

Q. At that time you were talking it over with Mr. Rentner, was that a problem that you were discussing at that time? A. Well, that is a question that we were concerned with for the future.

Q. Whether you would be required to return \$3.75 and \$6.75 that you knew would be copies of higher-priced merchandise; is that right? A. Yes, sir.

Examiner Averill: Which they knew to be or which were adjudged to be?

Mr. Haycraft: It is generally considered in the industry, of course, that the manufacturers of the cheaper garments copied them; that they were copies of something else in the higher-priced garments; they might not be exact copies but they were adaptations of what was a going garment that was popular in the industry. I will ask the witness that question if you wish.

Examiner Averill: Just as you desire.

By Mr. Haycraft.

Q. What was the situation, Mr. Block, as to the general characteristics of the garments produced and sold by \$3.75

11926

*John Block—For Commission—Resumed—reurrect.*

and \$6.75 manufacturers in 1933? A. Well, as I said before, most of our—most of their garments were either adaptations of copies, and a few were originals emanating from showrooms or designing rooms where they had designers; not many had designers, however.

Examiner Averill: That still brings me back to my query as to whether the question was intended to be asked the witness as to whether they were signatories of the Guild program or on the Guild program—were to return, themselves, in the price ranges mentioned; namely, the lower brackets, if they were to be copies of styles put out of some of the Guild manufacturers, or whether it was their obligation to return them provided they were adjudged to be copies.

11927

Mr. Haycraft: I will ask the witness what it was at that time.

*By Mr. Haycraft.*

Q. Will you answer that, please? A. The answer is "yes" in both cases, they were supposed to return copies which the retailer recognized as a copy, or if it were adjudged to be a copy by the Fashion Originators Guild of America.

11928

Examiner Averill: Do you see what I was after, in trying to find out? Because it seemed to me that it could not hardly be such a thing in the \$3.75 and under dress, such a thing where it was not a copy of something.

Mr. Martin: That was the problem.

Mr. Haycraft: That was the problem, if your Honor please.

By Mr. Haycraft.

Q. Now— A. What?

Q. Strike out "Now." A. What?

Q. I am going to reframe the question. A. Oh, I see. I thought you asked me one.

Q. No, no. A. I am sorry.

Examiner Averill: All right, let us have the question.

By Mr. Haycraft.

Q. I was not quite sure with respect to one of the answers that you made? A. No?

11930

Q. After June, 1933, when the organization and the members that you represented generally signed up these so-called declarations of co-operation, was it customary or did any of the stores—did any of the stores mentioned return garments to manufacturers in the lower-priced brackets?

Mr. Albert: I object as previously answered.

Examiner Averill: Let him answer it again and I think we will save time. Objection overruled.

By Mr. Haycraft.

Q. Answer the question. A. I do not understand the question.

Mr. Haycraft: Well, in fact I do not believe I had finished the question. I ask that the question be read.

11931

(Question read.)

By Mr. Haycraft.

Q. —from June, 1933, up until the middle of 1935, the latter part. A. Yes, there were returns made by our retailers.

11932

*John Block—For Commission—resumed—  
Redirect—Recross.*

Q. Those returns were made in the lower-priced brackets as well in the higher-priced brackets, in some instances? A. It would not make any difference if it were adjudged a copy if it were higher or lower; if it were a copy and their attention was called to it, or had they recognized it as a copy I presume they would have returned it.

11933

Q. Your reference to this agreement or understanding, that you had with Mr. Rentner—with regard to that, did you ever at any time ever invoke with respect to the return of garments on behalf of the dealers that you represented, that understanding that you had with Mr. Rentner? A. I do not believe, but I will say that we had very little trouble at the beginning.

Mr. Haycraft: That is all.

*Recross-examination by Mr. Albert.*

11934

Q. What do you mean by saying that you had very little trouble; do you mean that you had very few copies? A. No, I mean by that, as I remember, there were very few disputes as between the Fashion Originators Guild of America and any retailer concerning \$6.75's or as to the necessity for the return of such dresses. That was for a such time, and I remember after a while we began to get notices from the Guild, giving illustrations of garments in the higher brackets made by those that were Guild manufacturers and which had been copied by some other manufacturers in the \$6.75 group or lower.

Q. Up to the time that you got these so-called notices, you voluntarily returned copies in the lower-priced brackets? A. Well, just remember I am not the man in the retail business, I am at this end of it, but as far as I know, the Guild did receive co-operation from these retailers.

Q. That was voluntary, was it? A. Voluntary and otherwise; voluntary and involuntary.

Q. Do you recall being present at a meeting of retailers in May, 1935, at which were present Mr. Sussman of the May Company, Mr. Eisenberg of Hahn's, Mr. Bergdahl, Mr. Greenebaum of Felix Lilienthal, and Mr. Swinney of the Specialty Stores Association, as well as others, at which the question came up about the inclusion of the \$6.75 and under dresses, and the question of leniency in the extension of that program? A. There were such meetings, at least one, I do not remember the date, and I do not remember who were present, but I recall from your general description just what you are talking about. I know what you are talking about.

Q. You know when that meeting was held? A. No, I do not know.

Q. Does that refresh your recollection if I tell you that such meeting was held at the office of Mr. John Swinney of the Specialty Stores Association on May 2, 1935? A. I remember such a meeting, but I do not remember the exact date.

Q. Would you deny that it was in May, 1935? A. No, I would not.

Q. Does that sound about right? A. It does.

Q. Do you also recall that at that meeting after a discussion of the question of leniency and including the \$6.75 dresses; and under in the Guild program, there was another definite understanding that this leniency was not to extend beyond the period of sixty days? A. No, I do not recall that.

Q. Do you recall any discussion whatsoever in which the period of sixty days was mentioned? A. No, I do not recall that.

Q. Would you deny that there was such a meeting about the fact that the period should not extend beyond sixty days? A. I could not deny. I do not recall it.

11938

*John Block—For Commission—Resumed—11938.*

Q. Then you do not remember one way or the other, now? A. I do not remember hearing such a discussion regarding the sixty days.

Q. Is it a fair statement, Mr. Block, that in your low-end field the greatest fear of competition of those who are not co-operating retailers is of the chain stores? A. What is that question again?

Q. Is it a fair statement, Mr. Block, that in your low-end field the greatest fear of competition of those who are not co-operating retailers is of the chain stores? A. The greatest fear of chain stores?

11939

Q. I mean of the little stores the independent little stores are not particularly feared in the sense of your fearing them on the Guild program? A. Oh, yes, they are. They handle a lot of merchandise. They are feared.

Q. Would you say if all of the chain stores were included as co-operators, that your fears of the injury that the Guild program might be would be materially, if not very substantially, lessened? A. Right.

Q. Just to further that a little bit, if all of the chain stores signified their intentions of co-operating with the Guild, your fears of competition in the low-end price field would be substantially lessened, would it not? A. Undoubtedly.

Q. Undoubtedly? A. Undoubtedly.

11940

Q. How many chain store organizations are there whose competition you fear, have you made any computation of them?

Q. Would you be kind enough to answer it again? A. There are a number of chain stores that I have given their names, and there are others whose names I will get you if you want them.

Q. From your experience and knowledge in this industry, can you tell me approximately how many such chain store organizations there are whose competition you fear? A. My guess would be about twenty or twenty-five.

Q. Twenty or twenty-five? A. Yes, sir.

Examiner Averill: When you say chain stores, you do not mean individual stores but you mean chains?

The Witness: Chains; that is right.

By Mr. Albert:

Q. Chain stores in the commonly accepted sense, chain organizations? A. Yes.

Q. In that group would you consider— A. What?

Q. Question withdrawn. A. O.K.

Q. Is that the total number of chain stores? A. What?

Q. Question withdrawn. A. I do not catch.

Q. I withdrew the question. At the commencement of the Guild program against style piracy or the Guild program of anti-style piracy, how many chain store organizations were there who were in competition with your member stores, and whose competition you feared, in number?

A. Do you refer to apparel chain stores?

Q. I refer to chain stores whose competition your members feared in the low-end price field. A. Of dresses?

Q. Yes. A. There were less at that time than there are now.

Q. There were less at that time? A. Yes, sir.

Q. So that there are more chain stores who you now fear than there were at the time the Guild program was instituted? A. That is correct.

Q. At the time the Guild program was instituted, were there not chain stores who had signified their intention of co-operating their Guild?

Examiner Averill: Can he testify to that?

The Witness: No important ones that I know of.

Examiner Averill: All right. Go ahead.

11944

*John Block—For Commission—Resume—recross.**By Mr. Albert.*

Q. Well, you have used the word "important." Would you be good enough to tell me three of the most important chain organizations in this particular field?

Mr. Feldman: Lerner's, Lerner's and Lerner's.

A. That is well put. Lerner's is No. 1.

*By Mr. Albert.*

Q. You knew that without Mr. Feldman's assistance?

A. No, I really did not need Mr. Feldman's assistance.

11945

Q. You knew it of your own independent recollection and knowledge? A. Oh, yes, I knew that Lerner's was No. 1 all right.

Q. And he did not have to help you in the giving of that answer? A. No, indeed.

Q. Could you name two more? A. I think I would give you the name of Grayson's and Wilbur Rogers. That is my guess. There may be two that stand higher or do more volume than the last two mentioned, but those are the ones that I fear of mostly.

Q. That is, from the time from 1933 to the present? A. I will not say as to that. I am talking about to-day.

Examiner Averill: I do not see where we are getting with this.

11946

Mr. Albert: This is most important. If you will bear with me it will only take about one or two more questions.

Examiner Averill: Very well.

*By Mr. Albert.*

Q. Have you ever heard of Sears Roebuck & Company, Mr. Block? A. Yes, sir.

Q. Would you say they are important, more important than Wilbur Rogers or Grayson's? A. I did not catch.

Q. Would you say they are important chain store operators? A. What do you mean?

Q. In this field.

Examiner Averill: What field are you talking about?

*By Mr. Albert.*

Q. In the women's and misses' ready-to-wear apparel, and when I refer to any chain organization I refer to one in the women's and misses' ready-to-wear. A. Your question is easily answered, Sears Roebuck is a very important chain organization, but not so much in style merchandise.

Q. Have you any idea of the volume they do in this particular field?

11948

Examiner Averill: When you refer to, "style merchandise," do you mean the volume of style merchandise, or the volume of garments sold?

*By Mr. Albert.*

Q. Volume of garments sold. A. No, I will not venture any opinion as to the volume that they do.

Q. Mr. Block, as a matter of fact, do you not know that in the very price lines that you referred to, Sears Roebuck & Company does more business than Grayson and Wilbur Rogers chains combined, and with the same manufacturers who are using as sources—or, rather, who are used as resources by Sears Roebuck & Company are used by resources, or for resources by Graysons and by Wilbur Rogers? A. I would like for you to repeat that question. I got sort of lost in the middle of it somewhere.

11949

Q. Mr. Block, as a matter of fact, do you not know that in the very price lines that you referred to, Sears Roebuck & Company does more business than Grayson's and Wilbur Rogers' chains combined, and with the same manufactur-

11950

*John Block—For Commission—Resumed—Recross.*

ers who are used as resources by Grayson's and by Wilbur Rogers? A. It does not make any difference for the reason—

Q. Would you be good enough to answer my question? Oh, no, no, no, no. Let him finish his answer, I think the implication is obvious, and let us get the facts. I am desirous of getting the facts on that.

Mr. Albert: I will be very glad to have the witness give us any reason that will do any good, your Honor.

*By Mr. Albert.*

11951

Q. Please proceed. A. It does not make any difference for the reason—it does not make—my answer is, it does not make any difference for the reason that these chain stores and these specialty stores that have been referred to as the "pappa, mamma, and Rosie" stores—in other words, a little family store, they have very good locations and they are situated near to our type of stores. Sears Roebuck & Company may be three or four blocks out of the way and caters to a different element. Our stores are concerned more with the city type of families, and Sears Roebuck & Company gets a lot of its trade from the rural districts, and so forth, and they give them lots of parking space and usually have a stand that is not nearly as 100 per cent. a location as our stores have.

11952

Q. That also refers to the retail stores of Sears Roebuck & Company that are in the cities in which your stores are located? A. Yes, sir.

Mr. Feldman: Such as the State Street Store in Chicago?

The Witness: Oh, there are exceptions, you know that.

*By Mr. Albert.*

Q. You cannot tell what we know, it might surprise you what we do not know about these things. Suppose you tell us just what those exceptions are. A. Well, during the depression they managed to get hold here and there of a first class location at a bargain price, but originally their plan was to open stores not in 100 per cent. locations, and the large majority of their stores are not in 100 per cent. locations and it is the show window competition that our people have to fear.

*By Examiner Averill.*

Q. When you say "our people," to whom are you referring? A. I am speaking of the retailers such as we represent.

11954

Examiner Averill: Go ahead.

*By Mr. Albert.*

Q. Have you ever heard of J. C. Penny & Company, Mr. Block? A. Yes.

Q. Are they a substantial chain outfit in the price field that you have reference to? A. Practically altogether in the lower-priced price lines, yes, especially in the lower brackets I would say from \$7.95 down. They handle some goods in the same style as ours, but in the percentages it would not amount to much. Most of their stuff is in the lower-priced brackets.

11955

Q. How about the Darling shops? A. I would like to add about J. C. Penny & Company, it is in the same category with Sears Roebuck & Company.

Q. We had expected you to say that. A. Well, that is the fact.

Q. How about the Darling shops? A. The Darling shops are in the different category. They operate like the average apparel chain store does. They take good locations, and so forth.

11956

*John Block—For Commission—Resumed—Recross.*

Q. They are direct competition that you fear? A. Yes.

Q. How about the Peggy Ann Shops? A. They would be in the same type or category.

Q. The same category as the Darling shops? A. Yes.

Q. How about the Sally Shops? A. They would be in the same type or category.

Q. How about the Peggy Page Shops? A. I would say they are in the same category.

Q. As the Darling shops? A. Yes, sir.

Q. How about Zucca's shops? A. They would be in the same category as the others.

Q. How about Jerome's? A. They would be the same thing. It would be the same thing.

11957

Q. How about Angermann's? A. Angermann's usually get good locations. They are practically the same.

Q. How about the Plymouth shops? A. I do not know so much about them, but generally the same.

Q. No one of these chain stores was a co-operating retailer at the time of the formation of the Guild, was it?

A. I believe not, as far as I know.

Q. Will you accept my statement that everyone of them I have mentioned here is presently co-operating with the Guild?

Mr. Haycraft: I object to that.

A. If Mr. Post says so, I will accept his word for it.

11958

Mr. Haycraft: I move to strike that.

Examiner Averill: All right, strike that. It has nothing to do with this. However, he undoubtedly would accept the statement of Mr. Post in regard to that. I want to ask you something myself: Have you gentlemen not left out one important one; that is, Montgomery Ward & Company?

The Witness: Yes, they do the same thing as Sears Roebuck & Company, if your Honor please.

Mr. Albert: They are unsigned. We were simply giving a list of those who had signed up with the Guild.

*By Mr. Albert.*

Q. Montgomery Ward & Company, and Sears, Roebuck & Company, they would be in the same category, Montgomery Ward with Sears Roebuck, is that correct? A. What is that?

Q. Montgomery Ward & Company would be in the same category as Sears, Roebuck & Company? A. That is about it.

Q. And have been? A. Yes.

*By Mr. Feldman.*

Q. It is your opinion that they are in the same category with Sears Roebuck & Company? A. Yes, sir.

Examiner Averill: I just wondered why you left them out.

Mr. Albert: I was merely referring to those who had signed. The ones I mentioned were signed up chain stores. The witness thus far has been unable to give a list of the unsigned or signed.

Examiner Averill: I think the witness' testimony was that of these people whom you named at the time of the formation of the Guild, or shortly thereafter, they were not then members of the Guild.

Mr. Albert: That is right.

Examiner Averill: If that is the case, I wanted to know whether Montgomery Ward & Company was included in that list, and he said yes, they would be in the same category as Sears Roebuck & Company in regard to their dealings as to the style of stuff they had, and so forth. Of course, if

11962

*John Block—For Commission—Resumed—Recross.*

all these gentlemen have signed up since then, as you gentlemen seem to indicate, that is a matter of affirmative proof that you will put in.

Mr. Haycraft: At the proper time.

Mr. Albert: Oh, yes.

*By Mr. Albert.*

Q. Mr. Block, what is the total volume of business in dollars and cents done in the lower-priced end?

Examiner Averill: Gentlemen, let us not go into all of this.

11963

Mr. Albert: He gave some figures on percentage, and I want to show what that is based upon.

The Witness: I spoke of garments manufactured and not in dollars and cents.

Examiner Averill: What is the use of making this man guess? As to figures you will doubtless find there are published Department of Commerce figures elsewhere, and those figures are more or less accurate, I suppose. I do not see any value in having this witness simply speculate on something of this matter.

11964

Mr. Albert: If your Honor feels that the statement of 80 per cent. to 85 per cent. of sales of dresses in the lower-priced bracket is sold by that group is simply a wild guess, and one that cannot be properly substantiated by this witness, then I will withdraw any further questions in regard to the matter.

Examiner Averill: I do not think it would be any value to examine the witness in regard to those matters when he does not have the figures before him.

Mr. Albert: In view of your Honor's ruling, I have nothing further. Exception.

## AFTERNOON SESSION—2.15 P. M.

JOHN B. SWINNEY was thereupon called as a witness for the Commission and, being first duly sworn, testified as follows:

*Direct examination by Mr. Haycraft.*

Q. Your name? A. John B. Swinney.

Q. Your residence? A. 15 Clairmont Avenue, New York City, New York.

Q. Your occupation? A. I was until very recently manager for the Specialty Stores Association at 1441 Broadway, New York.

11966

Q. New York City? A. Yes.

Q. What is that? A. Specialty Stores Association.

Q. That is a group of stores? A. Yes, sir.

Q. How long have you had that position? A. What?

Q. How long have you been in that position? A. From August, 1928 until very recently. I resigned on the 10th day of September, effective at the end of this current year.

Q. What stores are included in that organization? A. At the present time there are thirteen stores. Shall I list them for you?

Q. Yes. A. The E. P. Slattery Company of Boston.

Q. Yes. A. The E. F. DeWees, Incorporated, Philadelphia, Pennsylvania.

Q. Yes. A. The Richard Healy Company, Incorporated, Worcester, Massachusetts.

11967

Q. Yes. A. Frank I. Jelleff's, Incorporated, Washington, D. C.

Q. Yes. A. L. L. Berger, Incorporated, Buffalo, New York.

Q. Next. A. Charles Livingston & Sons, Incorporated, Youngstown, Ohio.

Q. Yes. A. The Addis & Company, Syracuse, New York; The Stern & Mann Company, Canton, Ohio.

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*John B. Swinney—For Commission—Direct.*

Q. Yes. A. The Findner Company, Toledo, Ohio.

Q. Toledo or Cleveland? A. Cleveland—did I say Toledo?

Examiner Averill: Yes, you said Toledo; did you mean Toledo?

The Witness: No, I meant Cleveland. Mr. Post knows they are in Cleveland.

Mr. Pest: So they are.

*By Mr. Haycraft.*

11969

Q. Proceed. A. Cleveland, Ohio. The Union Company, Columbus, Ohio; the Himelhoch Brothers &amp; Company, Detroit, Michigan; the Young-Quinlan Company, Minneapolis, Minnesota.

Q. Yes. A. Harzfeld—Harzfeld's, Incorporated, Kansas City, Missouri.

Q. Generally speaking, in what business are those stores engaged? A. They are engaged in the retailing of what is known as ladies' ready-to-wear and accessories, women's ready-to-wear and accessories, with one exception being the Union Company at Columbus, Ohio, who have also misses' wear—I mean men's wear.

Q. They also carry men's wear? A. Yes.

Q. What price range of garments do they handle? A. Medium and fine merchandise.

11970

Q. By medium do you include \$10.75 cost? A. Yes, sir.

Q. Wholesale cost? A. The medium, the amount under \$10.75 cost and some of them go all the way down to \$3.75 to a limited amount—in other words, a limited amount under \$10.75 cost, some go way down to \$3.75 to a limited amount on the part of certain stores.

Q. Which stores in that group handle the lines in the lower brackets that you refer to and which classes are exclusive of the higher brackets? A. Well, I would say that the Young-Quinlan Company, Minneapolis, Minnesota, was almost exclusively in the higher-priced brackets

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11971

Q. Yes. A. I would say that the Union Company, Columbus, Ohio, at the present time carries a great deal of popular-priced merchandise.

Q. You mean below \$10.75 when you say "popular-priced" merchandise? A. I mean the Union Company will buy merchandise down to \$3.75 cost price.

Q. And what is the highest? A. A sprinkling of dresses not much over \$49.50; retail I am speaking of now.

Q. That is over the whole range? A. Their business is mostly in merchandise selling for \$6.50 to \$16.50.

Q. Wholesale cost? A. Wholesale cost. Their business is mostly in that particular store, a store like that, they sell that type of goods, while a store like the Young-Quinlan deals mostly in higher-priced merchandise. They buy the finest merchandise available in this town.

11972

Q. That ranges how high? A. Oh, dresses up to \$300 and \$400 each at retail. I have been with their buyer on many occasions when they have bought dresses at \$250 cost.

Q. That is the Young-Quinlan Company? A. Yes.

Q. Minneapolis? A. Minneapolis, Minnesota, yes.

Q. And the other you said was between \$3.75 and how much? A. They go up as high as \$16.75 cost.

Q. \$16.75 down? A. Yes. They buy a little above that and they formerly bought more than they have recently in the higher-priced brackets.

Q. Of the other stores in that group, how would you describe their price lines? You have given us the two extremes. A. The prices in the other stores mostly—take dresses which is an easy criterion, they are mostly from \$10.75 cost up to about \$39.50—\$39.75 cost.

11973

Q. They are distinctly within what would be known in the trade as the better shops? A. They are, yes.

Q. Now, when you first went with this Specialty Stores Association, did it have the same membership that they have at the present time? A. No. When I went there

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they had about eight or nine stores. I would have to check my office on that, but that is approximately the fact. I have taken in the membership during the last few years most of the additional ones. I lost one store due to certain conditions.

11975

Q. Which ones have come in since you have been with the organization? A. Young-Quinlan & Company have come in; Harzfeld of Kansas City have come in; Livingston & Son, Incorporated, Youngstown, Ohio, have come in; the Addis Company, Syracuse, New York, have come in; Richard Healy Company, Incorporated, Worcester, Massachusetts, have come in; and the Lindner Company of Toledo, Ohio—Cleveland, Ohio, was out at about that time, and about that time I got them to come back, making up about six.

11976

Q. Well, now, what sort of an organization is the Specialty Stores Association? Is it owned by these stores, or is it an independent organization which renders service to the stores? A. It is owned by the stores itself; in fact, it is almost a copy of the set-up of the Retail Research Association which is the parent corporation of the A.M.C. In other words, we do not have a separate corporation for this merchandising work. We do all of it through one corporation, where they have two. It was guided almost entirely from their set-up. It is owned by the stores themselves, organized under the membership laws of New York State.

Q. What ~~service~~ do you render the stores? A. We assist their buyers when they are in the market and doing their buying. We talk over their plans with them when they come in and advise them where to go to get what they need, and tell them the things that we think they ought to have that they might not have planned to get. Very frequently, our buyers go out with them when they go out in the market.

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11977

We keep and maintain an elaborate exchange of figures between the stores, the operation of the stores, merchandising and collections, store expenses and personnel operation. We get out a weekly fashion and market service report summarizing the fashion situation and new things in the market, and the market tendencies, and so forth.

We get out a report summarizing the best-selling numbers, picking out the numbers which the stores have re-ordered and calling them to the attention of the other stores. We also get out reports on sales promotion ideas, window dressings, and things of that sort. We look after their foreign purchases, get them samples, make arrangements for the purchasing of merchandise in foreign countries, arrange with commissionaires, arrange for the handling of money payments, and the securing of the goods, the customs, and things of that sort.

11978

We arrange for picking up orders and seeing that orders are shipped promptly on time. We speed up the work of handling the delivery of merchandise, and we do one thousand other things that these stores may need to have done in the New York market; and taking care of the adjustments of complaints, and things like that.

Q. How many employees do you have? A. About twenty-five.

Q. They are mostly buyers, are they? A. About eleven or twelve of them are buyers and the rest being stenographers and follow-up clerks. Our exchanges of figures in recent years has been handling by Harvard University, so we do not have a staff for that, and we just send the figures up to Harvard University and they take care of the tabulations, and so forth.

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Examiner Averill: What do you mean by that, this exchange of figures?

The Witness: We have an elaborate exchange of figures, weekly and monthly, with regard to

11980

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sales, collections, personnel, the handling of items by departments, and so forth, between the different stores. This is used to help out competition and to keep the stores on their toes.

For instance, we say, "Here is a fellow who is going ahead in the sale of handkerchiefs, and he is doing a better job than the other stores are doing in handkerchiefs." That causes the other fellow to wonder why he is not doing so well in handkerchiefs. It spurs them up to see what is wrong in their department in the handkerchiefs. In addition to that, we have other items. One particular thing I want to call your attention to is something we used to have. We created a particular brand of merchandise which we sold under the brand name of Romney, known after the famous painter of women, George Romney. That was very active until a few years ago, when there were so many restrictions made on it—so many restrictions were made on group buying that we stopped that.

11981

*By Mr. Haycraft.*

11982

Q. What was that group buying, just explain that a little further. A We bought Romney dresses that sold for \$49.75. We would have a committee of the buyers decide on what we were going to have—for instance, if for our next showing of dresses we wanted to have evening dresses, or we wanted to have daytime dresses, or what have you, and we would get as many suggestions as we could from the buyers, and also suggestions as to resources that they would favor for that kind of merchandise.

Then we would go around to the manufacturers and ask the manufacturers, and frequently go to the designers in their showrooms and we would tell them that we had for Romney designs this month a certain sort of work

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that we wanted, and we wanted to get some designs from them. For instance, if we were working on evening dresses we would go to an evening dress manufacturer, and they would work out a few numbers for us, a few special dresses on that in return for the volume of business we gave them, and these dresses would be organized by the dress buyer and myself, as the merchandiser, and eventually the day would come and we would have a showing of these dresses and the buyers from the stores would come in and select four or five dresses, whatever the majority liked, and then they would be bought for the group of stores, each store buying anywhere from a minimum of five or six, up to about eight or ten, depending on the circumstances, and these would be bought by that group of stores, and they would be purchased and forwarded at one time as an individual proposition. That is what we called the Romney dresses, we called them that, and we had a special label which we owned known as the "Romney" label, and this was a feature that we handled very successfully for a long time. The manufacturers would send over samples of dresses that they cared to submit under that plan, and we would make our selection and the purchases would then be made.

11984

Examiner Averill: Would different manufacturers submit their designs, or would you just get together and agree to submit your specifications to just one manufacturer and let him work up the matter in the design?

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The Witness: No, different manufacturers. We would have, as a rule, probably about fifteen dresses or twenty dresses from which we would select three or four. Then, in the last few years, these restrictions in regard to group buying came into effect, and since then the rules provide that they cannot send dresses to our showroom, so the

11986

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only thing that we could do was to go around to their places. Therefore, we would arrange for the dresses, but the difference was that they would show them in the manufacturers' showroom. We would take a whole group of buyers and trail around from one manufacturer to another and see these things—we would show them the dresses which they had worked out, and after that had been done and we had spent most of the day doing it, we would come back to our showroom or to our office, and we would take a blackboard and we would write down all the dresses we had seen, and a brief description and they would have to rely on their own memory and what they could remember having seen and what we told them on the blackboard because of the rule that we could not bring them to the office. It was a very clumsy method of doing it and served no good purpose that I could see.

11987

*By Mr. Haycraft.*

Q. When it was worked out that way, did the Association submit to those manufacturers designs or suggestions as to the type of garments? A. Yes, they would work, say, on evening dresses, and if that was true, of course, they would go to a house that made only evening dresses and we would tell them what we wanted. Generally, our buyer was very well acquainted with the market, and after she had talked with the manufacturer, he would say, "Come on, let us go back and see the designer." We would go into the back room and sit down and talk it out with the designers, and sort of get our heads together in working out what these dresses should be.

11988

Q. When was this that these restrictions with respect to group buying and group showing went into effect? A. That really went into effect with the formation of the Guild.

Q. The Fashion Originators Guild of America, Inc.? A. Yes. There was no restriction on that previously, previous to the formation of the Guild.

Q. I now show you Commission's Exhibit 14 in this record, being the minutes of the meeting held at the Garment Center Capital Club February 17, 1933, with representatives of resident buying offices—where representatives of resident buying offices and members of the Fashion Originators Guild were in attendance. I call particularly to your attention the statement on the second page of these minutes, which reads as follows: "Mr. Swinney of the Specialty Stores Association arose and expressed the thought that the manufacturers could help curb the evil of piracy by speeding deliveries of dresses on order. He also stated that if the Guild members saw fit not to supply dresses to buying clinics, that he would not ask the Guild members to co-operate with him until such time as the Guild could see its way clear to lend him this support." Do you recall that? A. Yes.

11990

Q. I would like to ask you what is meant by "clinics"? There are two points in there. A. I will take up your second one, which is the one that you have asked for now: Resident buying offices, such as ours, have held periodically, as much for the education of store owners and advertising and display people as to anything, at the beginning of the season, a brief demonstration of fashion tendencies, skirt may be shorter or you might have this kind of a silhouette which has come in, and in order to make that demonstration practical I have always felt it was much better to show them the actual clothes rather than merely talk about them.

11991

Then, another thing; all the resident offices are more or less in competition with certain independent organizations that are running that kind of thing which put us more or less on the spot. We have Toby, Ann Parish, and

11992

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so forth. We have felt from time to time that it was desirable for us to have these so-called clinics at which we would demonstrate these fashions. I began some years ago doing it by renting models of French originals, but that was not satisfactory. I arranged after that with the Guild on some occasions to get dresses from the Guild to demonstrate the points of view. That is what I have reference to in that particular statement. It was obvious that the Guild was entirely opposed to these clinics, and I stated that if they were I would not try to oppose them and therefore I would not try to have them, either directly or by trying to get around it some other way. We simply had to stumble along the best way we could after that.

11993

Q. They had expressed opposition to your holding of these clinics? A. They had refused to. It is a part of their program. They had refused to give us any merchandise for clinics. There is a long story in that connection. At times, they have given it to us temporarily and then they have taken it away.

11994

Q. What was the practice before the Guild was organized just as you have described it here this morning? A. Well, generally, about twice a year, sometimes extra times like at the beginning of the Palm Beach season, we would have a fashion show in the evening in our showroom, at which we would show the high lights of the situation, the dresses and the goods and the wraps and the coats, and so forth, and we would have around seventy-five people out which would come in from eleven or twelve stores. Frequently, we would have heads of divisions and especially store principals, because they seldom had time to see the line and get a survey of the whole thing. In addition, we would also have the advertising managers and the display managers. It was a very good education for them.

Q. After the Guild was formed, you were not allowed to do that? A. I think they would make an exception once or twice, or did once or twice and let us have them, and then they withdrew it.

Q. What was the other point, the speeding up of deliveries of dresses on order? A. In discussing this question of copies, I said, "One of the serious things is that frequently the copies show up in our inexpensive departments before the originals are delivered." In other words, we will place the business with Rentner or somebody else on four to six weeks' delivery. We will buy it and we will see the order put in process. Say we place that order on the 10th day of September, we will not get it until the 15th day of October. Along about the first of October we will suddenly discover, and I say that advisedly, that we already have the same dress, or a copy of the same general idea in our inexpensive dress department.

11996

My point was that the one way, or at least one very good way to help out in this program of copies, in which I believe they were really sincere, I thought was to find some way to expedite the delivery of their merchandise, that a four to six weeks' delivery was too long, and that one of the causes of copying was because a man making \$10.75 would get it out in ten days, and we would have to wait six weeks for the original of this copy.

Q. Did anything come out of this situation—especially, did anything come out of the suggestion that you made at that time? A. What is that?

11997

Q. Did anything come out of the suggestion that you made at that time? A. No.

Q. Nothing? A. No.

Q. What next? A. One of the most serious problems that we have in the better dresses is the very long time we have to wait for merchandise.

11998

*John B. Swinney—For Commission—Direct.*

Examiner Averill: If a dress comes out that is supposed to be an original, how many years, or months, or days, does it continue in vogue? I mean, is there a real demand for any length of time, and if so what is the length of time for which there is such a demand?

The Witness: Very seldom more than—there are occasionally dresses that might be the exception, but I cannot recall any instance in my experience of a dress that was good for re-order more than a couple of months—I cannot recall it lasting longer than that, and I have been with this business for nine years in this capacity,

11999

*By Mr. Haycraft.*

Q. Outside of the members of the Guild in 1933, were there any manufacturers of high-priced merchandise that you were interested in in the New York market? A. Oh, a great many in 1933.

Q. That is, from \$16.75 up? A. A great many in 1933.

Q. Were you able to get your group buying with those manufacturers that you refer to? A. Yes, we had very little difficulty in getting all the women's dresses that we wanted because many of the people we looked to and that we liked to work with in women's dresses were not in the Guild.

12000

Q. At that time? A. At that time, and we had no competition in bringing their dresses into the stores.

Q. What was your difficulty? A. Misses' dresses, because most of the misses' dresses houses, around \$25 to \$39.50 were in the Guild, there was hardly any one out.

Q. Was that continuing into February, 1933, the time that I directed your attention to? A. Yes.

Q. At that time did you sign any written declaration of co-operation, or the stores that belonged to your Associa-

tion, with the Guild, in carrying out the Guild's program?

A. My recollection is that there were no definite requests made upon us for that until some time in the spring of 1933.

Q. Do you recall as to just when it was? A. My recollection is that they asked us for those at the beginning of the fall season of 1933.

Q. At the beginning of the fall season? A. That would be about the first of July.

Q. Was there a date—do you recall that a date was set definitely when such agreements had to be signed up in order that you would receive garments? A. I am speaking from memory, but I think my memory is fairly reliable. I think that the beginning of the fall season, and the fall season, of course, began around the first of July, 1933.

12002

Q. What brought it to your attention at that time? A. Well, there were various meetings at which Guild matters and the Guild plan was discussed. I had been in frequent consultation with Mr. Rentner on Guild matters and with my own stores, and had letters from them in regard to these letters that went from the Guild in the spring of 1933. Unless I am very much mistaken I do not think I am, the opening date was the fall season of 1933.

Q. Would July 5, 1933, refresh your recollection as to that? A. Yes.

Q. Was that about the date? A. That would be about the date, generally, because lines are opened for the fall right after the 4th of July. Some people spring it earlier, but that is about the usual date.

12003

Q. What was your understanding of the requirements of the Guild after July 5, as distinguished from before July 5? A. I do not recall any difference between before and after July 5, 1933, immediately before and immediately after.

12004

*John B. Swinney—For Commission—Direct.**By Examiner Averill.*

Q. In other words, as far as you are concerned, as you understand the policy of the Guild, it was the same before as it was afterwards? A. Immediately before and immediately after.

*By Mr. Haycraft.*

12005

Q. I show you Commission's Exhibit 99-A to E, and ask you if that paper was ever called to your attention. This is a letter dated June 16, 1933, with certain attachments. I will ask you if you are familiar with those exhibits? A. 99-A to E, yes. Yes, I remember those letters because I had so many of them come back to me from stores, asking my opinion on the matter and what they should do.

Examiner Averill: Off the record.

(There was a discussion off the record.)

Examiner Averill: Proceed.

*By Mr. Haycraft.*

12006

Q. I will ask you, Mr. Swinney, whether or not prior to the latter part of June, 1933, your organization or any of the members of your organization, any of your members had been required to sign the so-called declaration of co-operation of anti-piracy, Commission's Exhibit 99-E? A. I do not think we had. That was the first distinct and definite request when we had a definite statement to that effect.

Q. I call your attention to 99-C, being a resolution which was passed unanimously at a meeting of the Fashion Originators Guild of America, on Monday evening, June 12, 1933: "Resolved that, in order to protect the property rights as embodied in their originations, the members of the Fashion Originators Guild of America, beginning with the opening of their fall lines on and after July 5, 1933,

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12007

limit the showing and sale of their merchandise solely to retailers who will co-operate in protecting these property rights by refraining from purchasing or marketing or dealing in any way in garments that are copies of models created by Guild houses." Now, calling your attention further to the explanatory note immediately following which says: "You will note that this resolution plainly stipulates, in order for a buyer to have access to any Guild house, he must consent to abide by the conditions set forth. We are, therefore, enclosing a copy of a declaration of good faith to which the signature of all retailers desiring to deal with Guild houses is to be affixed. There will be no exceptions to this policy." I will ask you whether or not that portion of the resolution had been—whether or not any such resolution—I will ask you whether or not prior to this time; that is, June, 1933, such action had been taken by the Guild— A. Well, the Guild—

12008

Q. —with respect to showings of Guild merchandise by Guild manufacturers? A. The Guild had discussed with us at various times that that was to be their program, but I do not recall seeing it put into that form until that time. Does that answer that question?

Q. Did you discuss at that time with members of the Guild this problem? A. Yes, on various occasions.

Q. What was the subject matter of those discussions? A. Well, I attended various meetings called by the Guild at which they explained what they were going to do. We raised some questions and that is all I recall.

12009

Q. What questions did you raise? A. Just how far they were going to go—what the program was going to do. The thing that brought that up first was the report that they were going to exclude all resident buyers from show rooms. I went over to see Mr. Rentner on that. That was when the Guild was first started. My dress buyer came back. She had been in Mr. Rentner's show room and she came back with the report that they were going to exclude

12010

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them, the Guild was in the future going to exclude them and they were not going to let resident buyers in the show rooms. That is what she told me, and I went over to see Mr. Rentner and he said that that was not the whole story, and that that did not clearly represent the facts, but that they were not going to allow them in unless the stores themselves signed the agreement, and the officers, themselves, also signed it.

Q. Did your office sign the agreement with the Guild?

A. Yes, sir.

Q. Did you sign the same agreement, or along the same general line? A. It was the same thing; it was the same agreement as the stores signed, as far as I can recall.

12011

Q. The reason I asked you that is, I show you Commission's Exhibit 92 and ask you if this is what you signed?

A. We signed the general blank, I cannot be sure that that is an exact copy of it, but I assume it is. If this is the standard agreement it is the one that I signed.

Q. This is the standard agreement of the buying offices.

A. Then that is the one we signed.

Q. Subsequent to that time— A. What?

Q. First, I will call your attention to the following statement in Commission's Exhibit 99-E: "We are proceeding on the principle that—since the Guild comprises all the outstanding style houses in the country, every retailer who is desirous of conducting his business in a wholesome, capable manner, will describe to the protective policy enunciated in the enclosed declaration." I will ask you whether or not you recognize the statement contained therein as being the situation at that time? A. I would not say that it was in 1933. There were important style houses that were not in the Guild at that time. I think most of them came in the Guild afterwards.

12012

Q. During the year 1933 and the year 1934, what took place with respect to the membership of the Guild? A. The only thing I can say is that in "Women's Wear Daily"

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12013

every little while you would see an announcement that such and such a firm had joined the Guild, and it was evident that they had from time to time gotten many additional members.

Q. Since June, 1933, had your organization, and by "your organization" I mean the Specialty Stores Association— A. Specialty Stores Association it is.

Q. —and the stores which make it up, co-operated with the Guild in its anti-style piracy program? A. So far as I know we have always co-operated with the Guild.

Q. In that you intend to include the returns of garments to manufacturers where the garments in question were adjudged to be a copy? A. I think we have always returned them. I think one case last year we had of a man—that one of our stores or store owners questioned the matter, and I took it up with the Guild and they said in that case that so many people had copied it that they would not require a return of the garment, and that he might sell them, that they had had so many complaints about that particular garment, and the copying of it was so widespread that they need not return it. That is the only case where we did not return it, and then we did it with the approval of the Guild.

12014

Q. You mean you did in all other cases return the goods? A. We kept the garments and sold them. They said so many people had copied them that they had gotten out of hand and that they were going to drop the matter as far as this particular dress or dresses were concerned, rather.

12015

Q. During that particular time, has the Guild extended its membership to include—to your knowledge, has the Guild extended its membership to include the \$10.75 cost manufacturers as distinguished from \$16.75 and above at the time of the Guild organization? A. I do not quite get what you mean.

Q. I withdraw the question. A. All right.

12016.

*John B. Swinney—For Commission—Direct.*

Q. I will ask you a new question: In June, 1933, did the Guild include in its membership any \$10.75 manufacturers? A. No.

Q. Did there come a time later when the Guild program was extended to include \$10.75? A. Nearly two years later.

Q. When did that first come to your attention? A. The first definite news that we knew of it was in the report in "Women's Wear" that the Dress Creators League was going to have their filing or keeping of registrations of styles done through the Guild, and I talked to one of them, and he said that it was more practicable than their first plan to set up their own bureau.

12017

Q. Can you fix the time when that came to your attention? A. In March or April, 1935.

Q. Do you recall attending a meeting in your office in or about May 2, 1935? A. That I recall very well indeed. It was one of the five or six meetings that we had had. I remember the meeting very well, May 2, and then it was continued on May 4.

Q. I show your Commission's Exhibit 31, and ask you if you recall whether or not at a meeting held on May 4, that you refer to, did you attend that in person, or was some one from your firm present? A. No, I attended it myself.

Q. And were you at the other meeting— A. Yes.

Q. —the second meeting? A. Yes.

12018

Q. From what organization did that meeting come primarily? A. The A.B.O.

Q. Who assigned it? A. What?

Q. Who designated the membership of the committee? A. Well, my recollection is that John Block did, who was the President.

Q. Who else, besides yourself, was on the committee? A. Well, there was quite a few of our A.B.O. members there. I remember Mr. Greenebaum was there and Mr. Block was there.

Q. Do you remember anyone from the Guild there?

A. Yes, Mr. Post was there and Mr. Reinitz was there and Mr. Golby was there and there were some dress manufacturers there also, but just who they were I am not sure now.

Q. Do you recall the subject-matter of the discussion at that meeting? A. Yes.

Q. What was it? A. Well, it was in conclusion of several other meetings from time to time in connection with taking in the \$10.75 manufacturers. Some of the stores in the A.B.O. were very much concerned about it because of the problem of the extension of the Guild copying rules to the cheaper dresses. My own group of stores were not very much concerned over it because they bought so little merchandise in the lower prices. It was not such a serious problem with them, but some of them did, some of them were somewhat concerned, but in general the feeling among our stores was that the advantages of the Guild program were sufficient so that we ought not to object as a result to any disadvantage which might result from taking in the lower-priced manufacturers.

12020

Q. Was anything said at that time—at the time of these meetings, with respect to the return of garments \$16.75 and under as to the number that could be returned? A. That was the big basis of the discussion at that meeting. They were trying, or we were trying to get a tangible interpretation of what would be leniency. The Guild had agreed to leniency during this period when they were trying to extend it down to include \$3.75 and \$4.75 and only until such time—furthermore, until such time as they could find a way of getting the chain stores into the organization; in other words, only until such time as the Guild could find some practicable way of getting the chain store organizations into the Guild organization.

12021

12022

*John B. Swinney—For Commission—Direct.*

A committee composed of Mr. Bergdahl, Mr. Reinitz being the other member, sat down in one of my offices to try to draw up an understanding of that sort as to just how far this agreement should go and such a memorandum was drawn up. It was at this time that this arrangement in regard to the 3 per cent. and 5 per cent. which has been mentioned in the previous testimony came out.

Q. Did you ever see any of the memoranda or documents what were made up as a result of these meetings and sent to the Guild? A. Yes.

Q. I show you Commission's Exhibit No. 8— Did you see this particular document? A. Yes, I saw that.

12023

Q. —62; Commission's Exhibit No. 862? A. Yes, I saw that.

Q. I will ask you if this is one of the memoranda that were drawn on about that time? A. This is the first letter.

Q. No. 862 is the first meeting? A. That is one that grew out of the Women's Wear—

Q. I call your attention to Commission's Exhibit No. 867, and ask you if this is a copy of the minutes of the meeting that you referred to a moment ago that Mr. Reinitz and Mr. Post and yourself attended on May 4? A. Yes.

Q. It is? A. Yes, I am not sure that was—I am sure of it now, I remember that memorandum.

Q. Subsequent to— A. What?

12024

Q. I withdraw that. First, I will ask you whether or not as a matter of fact the \$6.75 manufacturers were taken in after the \$10.75 manufacturers were taken in? A. I understand that they were taken in that fall.

Q. Let me see. What fall is that? A. The fall of 1935.

Mr. Albert: The fall of 1935?

The Witness: Yes.

*By Mr. Hajcraft.*

Q. Now, since June, 1933, have any of the stores that you represent been red carded, or threatened with red carding by the Guild? A. None were red carded—none was red carded, but there was some talk of red carding two or three of my stores, but it was not done.

Q. Which stores and when? A. Shortly after Lord & Taylor was red carded Mr. Post called me up one day and told me he was going to issue a red card for the Union Company in Columbus, Ohio. I asked him on what basis he was going to red card the Union Company in Columbus, Ohio, and he said that the Retail Dry Goods Association of Columbus, Ohio, had repudiated their Guild agreement and he said he was going to do that, and I said, "I do not know anything about it"; and I questioned it. I said, "I will find out about it and then call you again right away." He said, "All right." So I called Mr. Robert Levy of the Union Company in Columbus, Ohio, and asked him about it and just what the situation was. He said he knew nothing about it and "I will have to call you back in an hour," and he further said, "I have not been at any meeting at which there has been any such action taken." He called me back.

12026

Examiner Averill: Who called you back?

A. Mr. Robert Levy, the vice-president and general manager of the Union Company, Columbus, Ohio, he called me back and said, "I find that the secretary of the Retail Trade Board or Retail Merchants' Association, I do not know the exact name, wrote a letter to the Guild questioning the red carding of Lord & Taylor—"

12027

Examiner Averill: Just a moment. I do not think that is responsive to the question and I do not know the propriety of telling us what someone else

12028

*John B. Swinney—For Commission—Direct.*

told you, not a member of the Guild, and not in the presence of the Guild, unless something else develops to make it more pertinent. I think reports might be used, perhaps as a basis for some statement and you may be, possibly, permitted to testify along that line, but I do not think your answer can be along the line you have just indicated. Let me ask you a question or two.

*By Examiner Averill.*

Q. When was the Union Company of Columbus, Ohio, called? Was that shortly after Lord & Taylor was red carded? A. Yes, sir.

12029

Examiner Averill: Now you proceed, Mr. Haycraft.

*By Mr. Haycraft.*

Q. When was that? Do you remember when this Lord & Taylor red carding took place? A. Well, it was about the first—it was late in February or about the 1st of March of this year.

*By Examiner Averill.*

Q. Of this year? A. Yes, sir.

12030

Q. Can you state the situation as to the other store? What was the name of the other stores that were threatened with being red carded at that time? A. I was just trying to tell you what the threat was.

Q. Tell us the name of the other store. A. I told you the Union Company of Columbus, Ohio, sir. I just wanted to tell you what was that situation.

Q. You cannot do that now, because the question does not include it. You cannot go any further until you have finished the other question and then; no doubt, you will be asked another question.

Mr. Haycraft: Perhaps I can ask another question. I would like to get the facts now.

Examiner Averill: No, I would like to let him finish the first question first. I think it ought to be brought out that way. Now, the first question was as to the other store. You have given one store which is the Union Company of Columbus, Ohio. What was the other store?

A. L. L. Berger Company of Buffalo, New York, was the second store.

*By Examiner Averill.*

Q: Any other store? A. No.

12032

Examine Averill: Now, proceed, Mr. Haycraft.

*By Mr. Haycraft.*

Q. Now, with respect to the Union Store of Columbus, Ohio, you have referred to the fact that you took the matter up with Mr. Post and he talked to you about it, and that you took it up with that store. After you took it up with the store, did you talk with Mr. Post any more about it? A. Yes, I reported back to Mr. Post what Mr. Levy had told me.

Q: What was that? A. That he had not repudiated his Guild agreement, and that the statement of the Retail Trade Board was merely a question as to why they had red carded Lord & Taylor and was not a repudiation on the part of the entire Retail Trade Board of Columbus, Ohio.

12033

Q. Then, what did Mr. Post say? A. He said nothing further, and nothing more happened about it.

Q. And then, with respect to the Buffalo store, what was the situation there? A. The circumstances there were almost identical with the first one. It was reported that

12034

*John B. Swinney—For Commission—Direct.*

the Buffalo retail group had repudiated their Guild agreement and they had picked out Mr. Berger, as a representative retailer of Buffalo, to be red carded.

Q. What did you do? A. First I was called up by Mr. Post. I then called up Mr. Berger on the phone and he said he had not made any such repudiation, that so far as he knew the only thing that had happened was that the retail trade group secretary had asked about the Lord & Taylor red carding, so nothing was done about that either.

Examiner Averill: Can you explain to us what the liaison between Lord & Taylor, which I understand is a store in New York City—

12035

A. Yes, sir.

*By Examiner Averill.*

Q. —and a store in Columbus, Ohio, and a store in Buffalo, N. Y., is; was the Lord & Taylor organization a part of that organization? A. No, no, no.

Q. What was it? A. When they red carded Lord & Taylor, Mr. Petree, of James McCreery & Co., and also president of the Retail Merchants Association of New York City, wired the secretary of the Trade Boards in a number of cities objecting and asking them to question the red carding of Lord & Taylor.

12036

*By Mr. Haycraft.*

Q. Did Mr. Petree himself write a letter to the Guild making protest at that time? A. I do not know about that.

Q. To refresh your recollection, Mr. Swinney, as to the date that this took place, I will call your attention to a portion of Commission's Exhibit No. 69, minutes of the meeting of the Board of Governors, Fashion Originators Guild, held at the office of the Guild, Tuesday, February 18

1936: "Mr. Golby read a draft of a suggested reply which was to be sent to Mr. Neil Petree, president of the New York Retail Dry Goods Association. This letter was to advise Mr. Petree that the Fashion Originators Guild had no contractual relationships with the New York Dry Goods Association; and, therefore, the Fashion Originators Guild could not construe his letter to us as a general repudiation of their member stores' individual agreements. Where we find that a store refuses to co-operate according to their signature to our declaration of co-operation, we will continue to act in accordance with our usual procedure. The Board of Governors authorized that a red card be issued for Lord & Taylor before repudiating its agreement with the Fashion Originators Guild. This repudiation was based on a letter received by Mr. Neil Petree, president of the New York Retail Dry Goods Association directing attention to the fact that certain stores, including Lord & Taylor, would not give protection on merchandise wholesaling below \$16.75 and reserve the right to purchase copies wholesaling below \$10.75. The Lord & Taylor agreement with the Fashion Originators Guild never provided for such exceptions." Does that refresh your recollection as to the date, February 18, 1936?

A. Yes, offhand, it was right in about that time.

12038

Q. Now, Mr. Swinney, have you ever discussed with Mr. Post or any other official of the Fashion Originators Guild of America, the matter of holding style shows with manufacturers? A. Yes.

12039

Q. Have you ever learned from him of instances where manufacturers were penalized for violating the Guild's rules in that connection?

Mr. Albert: The answer is "yes" or "no," Mr. Swinney.

A. You said Mr. Post only?

12040

*John B. Swinney—For Commission—Direct.**By Mr. Haycraft.*

Q. Or any other executive of the Guild.

Mr. Albert: I object to it as being immaterial and no proper foundation being laid, and being pure hearsay.

Examiner Averill: Objection overruled.

Mr. Albert: Exception.

Examiner Averill: Noted.

A. All right. I discussed—

Mr. Albert: The answer is still "yes" or "no,"

12041

Mr. Swinney.

A. Yes.

*By Mr. Haycraft.*

Q. With whom did you have such a discussion? A. With Mr. Golby, a very brief discussion of one circumstance.

Q. When did that take place, approximately? A. I would say that it was—and I have not verified my memory but I would say it was in the spring of 1935.

Q. I will ask you whether or not the information you have just given us in the last answer was given to you by Mr. Golby? A. I will try to make it as concise as possible.

12042

Mr. Golby told me that the Guild had fined Myron Herbert & Charles Cooper for putting on a fashion show.

Mr. Albert: Period.

Mr. Martin: No. Wait a minute. Do not interrupt.

A. —for putting on a fashion show for our stores, Harzfeld in Kansas City and for one other store.

*By Mr. Haycraft.*

Q. Then, there are two of those stores, your stores? A. No, one of our stores and one other.

Examiner Averill: What is that?

The Witness: Kline's of St. Louis was the other store.

*By Mr. Haycraft.*

Q. Did Mr. Golby tell you anything about the circumstances under which those shows were put on? A. What?

Mr. Haycraft: Read the question.

(Question read.)

12044

A. I do not think so. I think it was more or less understood.

Examiner Averil: No, no.

*By Mr. Haycraft.*

Q. What was the occasion for him telling you that? A. I wanted to talk to him. I went to him and asked him what had happened because there was a report in "Women's Wear" that they were going to be fined, or had been fined, and as it was one of our stores I wanted to know what the story was.

Q. Did you find out at that time, or afterwards, what the nature of the show was, what sort of a style show it was? A. Well, it was more or less in the form of the regular Myron Herbert & Charles Cooper line of dresses being on display.

12045

Q. Prior to the formation of the Guild, you referred to style shows and clinics, and so forth, here in New York City, of your own organization. A. Yes.

12046

*John B. Swinney—For Commission—Direct.*

Q. I will ask you whether or not the custom during that time prior to the formation of the Guild, of the manufacturers was to hold style shows in retail establishments in different parts of the country?

Mr. Albert: I renew my objection.

Examiner Averill: Objection overruled.

Mr. Albert: Exception.

Examiner Averill: Noted.

12047

A. It was quite the custom on the part of certain manufacturers such as Hattie Carnegie and many others, to put on a fashion show in a store and a supplement to the efforts of the store in selling that manufacturer's line of dresses, sending their own models and generally someone to put on the show and talk up the things.

Q. Do you recall or do you recollect that your company was stopped by the rules of the Guild when the Guild was organized? A. Yes.

Q. So that such a showing—was that such a showing that you referred to in your testimony? A. Yes.

Q. A moment ago? A. Yes, sir.

Q. In regard to the finding of this particular manufacturer? A. Yes, it is the same sort of thing.

Q. Did he tell you how much that fine was? I am limiting that to what Mr. Golby told you. A. It is my recollection that he said it was \$1,500.

12048

Q. I now show you Commission's Exhibit 67, minutes of a meeting of the Board of Governors of the Fashion Originators Guild held on Tuesday, December 3, 1935, when the following resolution was passed: "Resolved, that the Fashion Originators Guild invites retailers to participate in an advisory retail council to be formed by the Fashion Originators Guild to collaborate on any future policies passed by the Fashion Originators Guild affecting the signatory retailers and their retail businesses." Do

you know of any retailers—first, I will ask you whether or not you have ever been invited to attend, or become a member of any such advisory council? A. No.

Q. Do you know of any such council being formed? A. I do not.

Mr. Haycraft: That is all.

Mr. Albert: Does that mean that is all with that question, or are you through with questioning the witness, Mr. Haycraft?

Mr. Haycraft: That is all for the witness. You may examine.

*Cross-examination by Mr. Albert.*

12050

Q. Mr. Swinney, when you testified your stores were in the habit of going up to manufacturers— A. I cannot hear the first part of that.

Q. I say, when you testified that your stores, your members, were in the habit of going up to manufacturers and suggesting designs—I just want to clear up a minor point. A. Yes.

Q. —you meant, did you not, that your members suggested the type of dresses that they wanted and the manufacturer would prepare to and would examine and design the model and prepare the dress model? A. Yes.

Q. That was generally what took place? A. Yes.

Q. You did not mean to convey the impression that you submitted a design and asked the manufacturer to get up the dress? A. No.

12051

Q. You testified that one of the things that you would like to see Guild manufacturers improve was the question of delivery dates? A. Yes.

Q. Was that so? A. Yes.

Q. You testified that it depended, I will not say—withdrawn. You testified that you had found it to be your experience that at times copies of the particular dress were

12052

*John B. Swinney—For Commission—Cross.*

out in the market prior to the time that you got the original from the Guild manufacturers; is that so? A. Yes.

Q. Did your investigations also show that the originals had not been delivered to anybody? A. I would not be sure because I know that manufacturers would frequently show Pacific Coast stores their goods and ship them ahead of eastern stores and make deliveries two or three weeks ahead for them because of the difference in the climate.

Q. Will you say aside from that exception generally that nobody got delivery of these medium-priced or expensive dresses prior to the time that you did? A. I think that would probably be true.

12053

Q. Then it is not your testimony, and you are not stating that a particular and special store had any favoritism shown to it over your stores? A. No.

Q. In the course of your investigation of that problem, have you discovered that the reason for that was the fact that original designs were stolen from manufacturers who were members of the Fashion Originators Guild prior to the time that they could make delivery? A. Well, I do not know that to be a fact, but that would be the inference.

Q. A fair inference? A. Whether by hiring away the sketches or not, I do not know.

Q. Do you not also know that that inability to deliver prior to the time that the copy appears, is due to the fact that these designs had previously been pirated while being shown?

12054

Mr. Haycraft: He said yes to that several times.

Examiner Averill: Then it will not do any harm and it will probably expedite the hearing.

Read the question.

(Question read.)

A. I do not know that, no. I do know this, that when a manufacturer quotes four to six weeks' delivery, he gives certain accounts quicker deliveries because of them having

a fashion show or something of the sort, and they get deliveries in two weeks on a certain percentage of the order.

Q. That is one of the reasons why retailers and manufacturers have agreed to restrict the fashion shows? A. Well, those are fashion shows which are not now being restricted. They are fashion shows held by stores with their own merchandise, and they are being held by the best stores in the country.

Q. What do you mean they are being held with their own merchandise? A. Merchandise that they purchase in the market. For instance, Miss Lawton in Cincinnati will have a fashion show about the 20th of September with her own merchandise, and she will get quicker delivery on certain dresses on account of that fashion show, and it would be perfectly possible for somebody to go in and get some of those things and make copies of them.

12056

Q. Do you know when this party went in and purchased the goods? A. I have been with Miss Lawton many times on the 5th of September when she was purchasing the goods and she would get delivery on the 20th from houses like Hattie Carnegie. They would put through a certain percentage of her orders for quick delivery so that she might get organized for the fashion show in two weeks.

Q. You testified that not all of the important dress houses were in the Fashion Originators Guild when it was first organized; is that so? A. Yes.

Q. That there were a great many resources that you could have contacted at that time? A. Yes.

12057

Q. For better class merchandise?

Mr. Haycraft: I object to that. He did not say there were a great many.

Mr. Albert: The witness can contradict me if he did not say it.

12058

*John B. Swinney—For Commission—Cross.**By Mr. Albert.*

Q. Were there a great many resources in the better class? A. There were quite a good many in some. There were not many in the misses' dresses but there were a few in women's dresses and a few of the Forty-seventh Street houses like Marie Conti. There were not many in New York.

Q. You were very active with Mr. Block in the A.B.O., were you not, Mr. Swinney? A. I was quite active, yes.

Q. Is it true or fair to say that you were very much interested in the F.O.G.A.? A. Yes.

12059 Q. And discussed problems with him with the idea of your carrying out this anti-style piracy campaign?

Mr. Haycraft: I object to that as incompetent, immaterial, and irrelevant whether they discussed the matter or not.

Examiner Averill: Objection overruled, but I think the question should be restated in order to make it clearer.

*By Mr. Albert.*

12060 Q. You discussed problems of the Guild with him during all of that period? A. I attended many meetings of the A.B.O. at which Mr. Block was chairman and president, if that is the fact that you wish to bring out, and most of my contacts with him were in connection with meetings. There was not much aside from any of these meetings.

Q. Did you have any discussions with him prior to seeing him at the meeting, or by calling him up as to what was going to be discussed? A. Very seldom. Most of the discussions I had with him were at the meeting.

Q. Did you ever discuss with him in 1934 the inclusion in the Guild of the \$10.75 dress houses? A. I do not think so.

Q. Did you ever hear him advocate the inclusion of the \$10.75 dress houses in the Guild in 1934? A. I do not recall it.

Q. You mean by that that he may have, but you do not remember? A. I do not recall ever discussing the \$10.75 with him, with Mr. Block, before the matter came out in "Women's Wear Daily" in the spring of 1935.

Q. Let me ask you this specifically: Did you ever see an article in "Women's Wear" which you have testified you got some of your information from, by Mr. Block, advocating the inclusion in the Guild of the \$10.75 dress lines?

A. I do not recall it. What was the date of it?

Q. January 17, 1934. A. 1934?

Q. Yes. A. I have no recollection of ever seeing that.

Q. Do you recall the National Retail Dry Goods Association meeting held at the beginning of January, 1934?

A. When—

Q. The convention. A. I went to the second one but not the first one. There were two.

Q. When was the second one? A. The second one was when Mr. Post and Mr. Rentner came into the meeting, Mr. Post I think made a talk.

Q. Was that, as a matter of fact, the first one? A. No, there was one before that. I did not attend the first one.

Q. Mr. Swinney, I am referring to the meetings which were held with the National Retail Dry Goods Association in 1935; to be more specific, directing your attention to the convention of the National Retail Dry Goods Association which was held on January 4, 1934. A. January, 1934?

Q. Yes. A. Offhand, I do not recall it. I do not recall it as such. If I saw the reference to it I might remember it. I do not recall it now.

Q. I will just get at it this way: Do you recall attending the merchandise division of the National Retail Dry Goods Association convention on or about December 17, 1934? A. I do not recall it from that brief statement.

12064

*John B. Swinney—For Commission—Cross.*

Who was on the program, and who was chairman and something like that, and maybe I will remember it.

Q. Maybe we will save time this way. A. I am trying to be helpful.

Q. I show you an article appearing in "Women's Wear Daily" on Wednesday, January 17, 1934, being a report of an interview with Mr. Block, and ask you if you heard Mr. Block make the statements contained therein. A. I do not recall this at all. I do not think I could have been at the meeting.

12065

Q. Do you know anything about the speech of Mr. Rentner that is referred to at this time, or to which this has reference to at that time? A. I heard so many speeches by Mr. Rentner during this period on Guild matters that I am quite hazy about it.

Q. I think there are a good many of them in that category on this side of the bench from the Examiner. A. I do not recall. My recollection is that I heard another meeting on that day on the testing of merchandise, and I did not attend that meeting. I was chairman of the committee on fabric testing.

Q. You do not remember this? A. No.

Q. You did not, therefore, discuss the matter with him? A. No.

12066

Q. I show you Respondents' Exhibit 44 and again ask you whether or not in the course of your perusal of "Women's Wear Daily" for your information in the industry whether or not you saw that advertisement? A. I do not recall it.

Q. I show you Respondents' Exhibit 45 and ask you whether or not you saw that advertisement appearing in the "Women's Wear Daily"? A. I do not recall it. I think that arrangement was made afterwards—I think that arrangement was withdrawn afterwards.

Q. What? A. I think that arrangement was withdrawn afterwards.

Q. When did you first learn of that? A. Well, perhaps I should not ask a question. I am supposed to answer them. But it seems to indicate to me from 1933 on the Guild registered the \$10.75 houses.

Q. When did you first learn that you think that was to be withdrawn? A. Well, the arrangement with the Guild between the Guild and the Dress Creators' League was not made until this spring.

Q. No, no, no. You say that you had never seen or did not recall Respondents' Exhibit 44 or Respondents' Exhibit 45. A. Yes.

Q. And that was your impression that the matters herein contained had been withdrawn—when did you first learn that? A. The first one is not anything, but the announcement of it and telling what a fine thing it is. 12068

Q. Very well, then, let us refer to your description of Respondents' Exhibit No. 45 as being something that refers to something. When did you first learn that that had been withdrawn? A. That is what I said. I said that so far as I knew the arrangements with the Guild were not completed until the spring of this year.

*By Mr. Albert.*

Q. Mr. Swinney, did you ever learn that the Dress Creators' League of America was collaborating with the Registration Division of the Fashion Originators Guild of America in August of 1933? A. That was announced in February or March, 1935, that they had completed such arrangements. I never heard of it in 1933. 12069

Q. Did you know that such arrangements had been commenced in August, 1933? A. I did not know anything definite on that. My assumption is that they started it but it did not go through.

Examiner Averill: Oh, no, we do not want any assumptions. We have had too many of them already.

12070

*John B. Swinney—For Commission—Cross.**By Mr. Albert.*

Q. Did you know that they had started in August, 1933?  
A. No.

Q. You did not? A. No.

Q. Is it your contention that the first you ever heard of or knew of the intention to include the \$10.75 dress manufacturers in the Guild was in the summer or late spring of 1935? A. Early spring of 1935.

Q. You have referred to a meeting held in your offices on May 2, 1935, at which the question was brought up with respect to the taking in of the \$10.75 manufacturers and the protection of dresses selling for \$6.75 and below. A.

12071

Yes.

Q. Do you recall that meeting? A. Yes, sir.

Q. And the question arose as to whether or not there should not be a leniency in the enforcement of that provision; do you recall that? A. Yes.

Q. Do you recall that during the course of the discussion at that meeting the statement was made that the period that would be considered would be a period of sixty days? A. I never heard of such a statement.

Q. Would you say that such a statement had not been made? A. I did not hear any such statement made.

Q. Were you present at all times? A. I think so.

Q. This was in your own office, was it not, Mr. Swinney?  
A. Yes, sir.

12072

Q. Did you not in the course of your duties run in and out of the meeting to attend to various matters in the Specialty Stores Association? A. I do not recall leaving the room.

Q. Was it the consensus of the meeting that universal style protection was highly desirable? A. I think so.

Q. Was it the consensus of most of the members of the resident buying organizations that the difficulties were all of a minor nature and could be overcome easily? A. I do

*John B. Swinney—For Commission—Cross.*

12073

not think that is quite true. I think that the stores which had large popular-priced departments felt that it was a more serious problem than that.

Q. Who were represented at this meeting? A. There was Mr. Cavendish, Kirby, Block & Company, and Felix Lillenthal, and—

Q. Who was present at that meeting on the part of Cavendish? A. I am reasonably certain it was Mr. Lundgren or Mr. Schaffer.

Q. Were there any others that you can recall in a similar position? A. Mr. Block was there and Mr. Greengbaum was there and I think Mr. Hasenberg was there. I have not checked the list, but there were five or six stores there.

12074

Q. Were all those whom you have just named substantially in agreement that universal style design protection was highly desirable and the difficulties were of a minor nature and could be easily overcome? A. I would not say that the consensus of the meeting was that the difficulties were of a minor nature and could be easily overcome.

Q. Was any period of time whatsoever mentioned during which there was to be leniency in the enforcement of the Guild program in the low end dresses? A. I never heard such a period of time stated.

Q. What was the understanding, in your opinion, with respect to it, Mr. Swinney? A. To answer that question—do you want me to answer that question?

Q. Yes. A. What was my understanding of the statement in regard to leniency, is that it?

12075

Q. Yes.

Examiner Averill: The duration of time.

A. I heard no statement in regard to the duration of time.

12076

*John B. Swinney—For Commission—Cross.**By Mr. Albert.*

Q. How was it referred to in any way at all? A. Until such time as it would be possible to get the cheaper priced manufacturers to get their own designers and create their own lines and until such time as something could be done about the chain stores.

Q. I show you a letter dated November 6, 1934, on the stationery of the Special Stores Association, and ask if that letter was sent by you and if this is your signature affixed to the letter? A. This is doubtless my letter. I did not send it out, but apparently my secretary signed it and sent it out. It is not my handwriting.

12077

Q. You dictated it, did you not? A. I probably did. I do not recall it definitely, but I probably did, but I did not send it.

Examiner Averill: You are not repudiating it?

A. No.

Q. You remember dictating it? A. I do.

Q. And you feel that it was sent out from your office in the regular course of business? A. I do.

Q. And your secretary signed it with your authority, did she? A. She did. I do not even know the initials of the stenographer. That is not my regular stenographer.

12078

Mr. Albert: Is it not a fact, Mr. Swinney, that the Specialty Stores Association are opposed to copying, and have no desire to encourage anyone in the making of copies?

The Witness: I think that is a fair statement.

*By Mr. Albert.*

Q. Now, in your testimony with respect to the Union Store of Columbus, Ohio, and the Berger Store, Buffalo,

Y, in which you stated that Mr. Post made certain inquiries with regard to red carding, is it not a fact that Post called you on the telephone and stated that he had heard certain rumors and had certain information which led him to believe that those two stores were withdrawing their co-operation, and that if that were so the result would be that those stores would be red carded, and asked you to check on that information? A. He opened up the discussion by saying that he thought he was going to red card these two stores. Then he went on to state why.

Q. Did he not amplify his remarks by telling you what he brought this on and stated what the results were if it were true and asked you to check up on the matter? A. I have given you the statement of what he said.

Q. Do you deny that Mr. Post, Mr. Swinney, asked you to verify the information which he had, and whether or not it was authorized? A. My recollection is as I have previously stated, that I volunteered to do so.

Q. And he said, "Can you get me the information?" A. Something to that effect.

Q. So that it was just, generally, a very friendly conversation? A. So that it was just a general and very friendly conversation?

Q. Yes. A. Well, he was just forewarning me that he was going to do something, and what he was going to do, and asked him why he wanted to red card that store, and he said that he wanted to red card some store besides the A.C. stores; that he did not want to limit it to A.M.C. stores.

Q. Did he not say that he would wait before taking any action until you obtained the information with respect to these stores? A. I do not recall. He may have, but the chances are that I asked him to wait.

Q. The fact remains that he did wait? A. Yes.

12082

John B. Swinney—For Commission—Cross.

Q. To get the information that you asked for? A. That is right.

Q. And you got him the information? A. I called him back in an hour or so.

Q. No action was taken? A. That is right.

Q. Are there any A.M.C. stores in Buffalo? A. In Columbus but not in Buffalo; the question came up in connection with Columbus where he had already red carded F. & R. Lazarus & Company.

Examiner Averill: And in Buffalo it was L. L. Berger?

The Witness: That is right.

12083

Mr. Albert: That is all, Mr. Swinney.

(Whereupon, at 4.23 o'clock P. M., December 7, 1936, the hearing was adjourned.)

Room 901, 45 Broadway,  
New York, N. Y.,  
December 10, 1936.

Met, pursuant to adjournment, 10 A. M.

Before: EDWARD M. AVERILL, *Examiner.*

12084

(Same Appearances.)

PROCEEDINGS.

Mr. Haycraft: I offer in evidence at this time Commission's Exhibits for Identification 946 to and including 955, both inclusive.

Mr. Albert: No objection to this one.

Examiner Averill: Gentlemen, a copy of the letter heretofore marked Commission's Exhibit No. 946 for

Identification, and bearing date July 3, 1936, purporting to be from John B. Swinney to Jack Goldston of the Fashion Originators Guild of America, Inc., will be received in evidence and marked Commission's Exhibit 946.

(The letter heretofore marked for identification Commission's Exhibit 946 was marked as an exhibit and received in evidence.)

Mr. Haycraft: I now offer Commission's Exhibit No. 947 for Identification.

Mr. Albert: No objection.

Examiner Averill: The letter bearing date July 2, 1936, heretofore marked Commission's Exhibit 947 for Identification, Mr. Jack Goldston to John Swinney, Specialty Stores, New York City, N. Y., will be received in evidence and marked Commission's Exhibit 947.

12086

(The letter heretofore marked for identification Commission's Exhibit 947 was marked as an exhibit and received in evidence.)

Mr. Haycraft: I offer Commission's Exhibit 948 for Identification.

Mr. Albert: No objection.

Examiner Averill: The letter bearing date June 29, 1936, heretofore marked Commission's Exhibit 948 for Identification, from I. Himelhoch of Himelhoch Brothers & Company, Inc., Detroit, Mich., to John B. Swinney, Specialty Stores, New York City, N. Y., will be received in evidence and marked Commission's Exhibit No. 948.

12087

(The letter heretofore marked for identification Commission's Exhibit 948 was marked as an exhibit and received in evidence.)

Mr. Haycraft: I offer Commission's Exhibit 949 for Identification in evidence.

Mr. Albert: No objection.

12088

*John B. Swinney—For Commission—Cross.*

Examiner Averill: A copy of a telegram bearing date June 29, 1936, heretofore marked for identification Commission's Exhibit 949 for Identification, the same being from John B. Swinney to Himelhoch Brothers & Company, Inc., Detroit, Mich., will be received in evidence and marked Commission's Exhibit 949.

(The telegram heretofore marked for identification Commission's Exhibit 949 was marked as an exhibit and received in evidence.)

Mr. Haycraft: I offer in evidence Commission's Exhibit 950.

12089

Mr. Albert: No objection.

Examiner Averill: A copy of a letter bearing date June 27, 1936, and heretofore marked Commission's Exhibit 950 for identification, apparently from John B. Swinney, Director, Specialty Stores, to I. Himelhoch, Himelhoch Brothers, Detroit, Mich., will be received in evidence and marked Commission's Exhibit 950.

(The letter heretofore marked for identification Commission's Exhibit 950 was marked as an exhibit and received in evidence.)

12090

Examiner Averill: In connection with that particular exhibit, or is it the next one that does not have the date; apparently it is the next one. What purports to be a copy of a letter which the witness has testified as bearing date June 24, 1936—is that correct?

The Witness: Yes, sir; that is correct. It should bear date June 24, 1936.

Examiner Averill: And which was heretofore marked for identification Commission's Exhibit 951, the same purporting to be from Jack Goldston to John B. Swinney, will be received in evidence and marked Commission's Exhibit 951.

*John B. Swinney—For Commission—Cross—Redirect.*

12091

(The letter heretofore marked for identification Commission's Exhibit 951 was marked as an exhibit and received in evidence.)

Examiner Averill: I might say that the witness having testified that this exhibit should bear date June 24, 1936, I have accepted that and placed upon the letter for easy reference to this by those who in the future may need to refer to it as an exhibit.

Mr. Haycraft: I offer Commission's Exhibit 952 for Identification in evidence.

Mr. Albert: No objection.

Examiner Averill: I do not, at the moment, gather the point why this should be introduced in evidence. Just what is this and why should it go into evidence?.

12092

Mr. Haycraft: This is a part of the complete file of this witness. I did not feel justified in leaving out a part of the file, but preferred to introduce it as a unit with every paper in it.

Examiner Averill: This simply seems to be a notation from Mr. Swinney to his buyer to see him about the matter. What possible value can it have?

Mr. Haycraft: In the first place, it is a part of the file and completes the file. In the second place—I would like to ask the witness as to what value it has other than that.

*Redirect examination by Mr. Haycraft.*

12093

Q. What other value does it have? A. Its only value outside of that is that it bears out the fact that at the time in my office I asked my buyer to come in and I discussed the matter with my buyer. As such, it would give some indication of the basis for what action I took, as being influenced to some degree, at least, by the conversation I had with the buyer.

12094

*John B. Swinney—For Commission—Redirect.*

Examiner Averill: Gentlemen, the paper heretofore marked Commission's Exhibit 952 for Identification, and which apparently was addressed to Miss Saslove, and signed J. B. S., and heretofore marked Commission's Exhibit 952 for Identification, will be received in evidence and marked Commission's Exhibit 952.

(The paper heretofore marked for identification Commission's Exhibit 952 was marked as an exhibit and received in evidence.)

Mr. Haycraft: I offer in evidence Commission's Exhibit 953 for Identification.

12095

Mr. Albert: No objection.

Examiner Averill: The telegram bearing date June 26, 1936, heretofore marked Commission's Exhibit 953 for Identification, the same being from I. Himelhoch to Specialty Stores, attention of Mr. Swinney, will be received in evidence and marked Commission's Exhibit 953.

(The telegram heretofore marked for identification Commission's Exhibit 953 was marked as an exhibit and received in evidence.)

Mr. Haycraft: I now offer in evidence Commission's Exhibit 954 for Identification.

Mr. Albert: No objection.

12096

Examiner Averill: The paper heretofore marked Commission's Exhibit 954 for Identification, and which is without date, from Jack Goldston, this is apparently a form letter bearing addressed to "Gentlemen," and refers to a mimeographed sketch which is on the letter itself, and part of the paper itself will be received in evidence and marked Commission's Exhibit 954.

(The paper heretofore marked for identification Commission's Exhibit 954 was marked as an exhibit and received in evidence.)

Examiner Averill: The above exhibit refers to style No. 974, registered with the Fashion Originators Guild of America by the Starr-Maid Dresses.

Mr. Haycraft: I now offer in evidence Commission's Exhibit 955 for Identification.

Mr. Albert: No objection.

Examiner Averill: A paper, without date, heretofore marked Commission's Exhibit 955 for Identification, and which refers to style No. 732 by Daniel S. Westheim, registered with the Fashion Originators Guild of America, and which apparently is from Jack Goldston, Fashion Originators Guild of America, Inc., will be received in evidence and marked Commission's Exhibit 955.

12098

(The letter heretofore marked for identification Commission's Exhibit 955 was marked as an exhibit and received in evidence.)

Examiner Averill: You may proceed.

*By Mr. Haycraft.*

Q. I will ask you, Mr. Swinney, whether or not the two dresses described on Commission's Exhibits 954 and 955 were the dresses involved in this correspondence with I. Himelhoch of Himelhoch Brothers of Detroit?

12099

Mr. Albert: That is objected to as improper redirect examination.

Examiner Averill: Read the question.

(Question read.)

Examiner Averill: As I understand this file, it grows out of a letter which was marked for identification Respondents' Exhibit 95, and which at the

12100

*John B. Swinney—For Commission—Redirect.*

time there was some question whether the letter would be exhibited to Counsel and whether it would not, on Monday evening. I think as this is a matter which was brought out in a way, at any rate, in the cross-examination, why, I think it is pertinent for him to show on redirect examination anything that may be material in connection with that question of the dresses and the correspondence with Himelhoch, so I will overrule the objection and the witness may answer the question.

Mr. Albert: Exception.

Examiner Averill: Noted.

12101

*By Mr. Haycraft.*

Q. Answer the question. A. What is the question?

Mr. Haycraft: Read the question.

(Question read.)

A. Only one of these dresses were involved with Himelhoch, and that was the style No. 732 from David S. Westheim, David Westheim it is—copied by Harris Dress Company and referred to on Commission's Exhibit No. 955.

Examiner Averill: That is David Westheim?

The Witness: Yes, sir.

*By Mr. Haycraft.*

12102

Q. What about the other dress? A. So far as I know they did not have the other dress.

Q. Did you receive from Mr. Goldston two sketches—that is, the two form letters, Commission's Exhibits 95 and 955? A. Yes, sir.

Q. I notice on Commission's Exhibit No. 949 you tell Himelhoch Brothers, "Do nothing about Westheim Dress No. 732, copied by Harris." What prompted you to send

*John B. Swinney—For Commission—Redirect—Recross.* 12103

that telegram? A. The discussion I had with the Guild on that, Monday the 29th.

Q. With whom did you talk at the Guild? A. I talked with Mr. Goldston about it.

Q. What did you say to him and what did he say to you? A. I asked him what he thought we should do about it. My memory is a little bit hazy on that, but the evidence is in the telegram, that after talking to Mr. Goldston I told Mr. Himelhoch that he need do nothing about the Westheim dress.

Q. Do you remember why he told you to do nothing about it? A. There was a number of cases where the dresses were copied by so many people and Goldston said that the matter had gotten out of hand and they would do nothing about it, and my recollection is that this was one of them. I do not know just exactly why I got the permission on the part of Mr. Goldston to do nothing about it, but I do know that that was probably the reason, and I do know that I did get permission from him to do nothing about it, and nothing was done about that.

Q. Following this conversation that you had with Mr. Goldston on June 9, 1936, you received this letter on July 2, 1936, being Commission's Exhibit No. 947? A. Yes, sir.

Q. Is that correct? A. It is.

Mr. Haycraft: Those are all the questions I have to ask.

*Recross-examination by Mr. Albert.*

Q. Mr. Swinney, you understand the file of correspondence, being Commission's Exhibits 946 to and including 955, both inclusive, to be as follows, do you not? That Harris Dress Company was not only a confirmed but an admitted copyist of dresses and that any co-operating retailer who thereafter purchased dresses from Harris Dress

12104

12105

12106

*John B. Swinney—For Commission—Recross.*

Company which were adjudged copies would be presumed to have intentionally purchased those copies; is that so?

Mr. Haycraft: I think that the exhibits should speak for themselves, Mr. Examiner.

Examiner Averill: Oh, I will overrule the objection. I think he may answer that.

Mr. Haycraft: Exception.

Examiner Averill: Noted.

*By Mr. Albert.*

12107

Q. Answer the question. A. I think as the result of that various correspondence, Mr. Goldston came out in one of his later letters with a request that the stores boycott Harris Dress Company.

Q. What letter is that? A. This is the June 24 letter.

Q. Will you please be good enough to point out any portion of that letter which states or asks what you say it does? A. He first went on to say in this letter that, according to his story, Harris Dress had served us with notice that they intended to copy certain dresses.

Q. As an expert in the industry, do you know that to be an actual fact? A. I do not.

12108

Q. Go on. A. Then he says: "May we point out that as you do business with a manufacturer who has frankly stated that he intends copying our goods, more than the usual precaution must obviously be taken. The Fashion Originators Guild is compelled to infer from any continuance on sale of copies from a firm with which you have had previous unsatisfactory controversies as indicative of a store's intention to disregard its representation of cooperation to us." Now, in reply—

Q. Is that the part in the letter that you say states that you are going not to buy dresses from Harris Dress Company or that you are not to buy dresses from Harris Dress Company? A. Yes, sir.

Q. That is your interpretation of that paragraph? A. Yes, I would infer that is what Mr. Goldston means.

Q. Does a word of caution to you act as a stop signal; is that what you mean? A. I do not understand the question.

Q. That is, a word of caution to you is a stop signal; is that what you mean?

Mr. Haycraft: I object to that as argumentative. The witness has stated the language and his inference of it.

Mr. Albert: He did not say to that, he said the letter to him as an expert had a certain meaning. I am trying to develop that meaning a little further.

12110

Examiner Averill: I think the witness may answer that question. The objection is overruled.

Mr. Haycraft: Exception.

Examiner Averill: Noted.

The Witness: What is the question?

(Question read.)

A. I do not know as I understand just what you mean by that.

By Mr. Albert.

Q. Answer it the best you can. A. We had no way of knowing that the Harris Dress, that a Harris Dress, rather, was a copy until it was so adjudged a copy. I had no knowledge that Himelhoch had bought these dresses from Harris, and Himelhoch had no knowledge that they were copies until they were so adjudged.

12111

Q. You had full faith and confidence, did you not, in the Fashion Originators Guild of America— A. What do you mean by that?

Q. —in their anti-style piracy committees? A. You mean, we are in favor of it?

12112

*John B. Swinney—For Commission—Recross.*  
*Milton J. Greenebaum—For Commission—Direct.*

Q. Yes. A. Yes.

Q. You had confidence and felt secure that when the anti-style piracy committees adjudged a dress a copy the probabilities were that that dress was a copy? A. Yes.

Examiner Averill: If Counsel thinks it necessary, all well and good. I think from the letter I would say that the letter is not capable of the interpretation that the witness has placed upon it. It is clearly not capable of any such interpretation as that. That is the reason I did not understand the purpose of the examination.

12113

Mr. Albert: In the light of Your Honor's statement, I shall ask no further questions on that. I have no further questions for the witness.

Examiner Averill: Anything further, Mr. Haycraft?

Mr. Haycraft: Nothing further.

Examiner Averill: Mr. Swinney, you may be excused.

(Witness excused.)

Mr. Haycraft: I will call Mr. Milton J. Greenebaum.

12114

MILTON J. GREENEBAUM was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

*Direct examination by Mr. Haycraft.*

Q. What is your name? A. Milton J. Greenebaum.

Q. How do you spell Greenebaum? A. G-r-e-e-n-e-b-a-u-m.

Q. Where do you live? A. 75 Central Park West, New York City, N. Y.

Milton J. Greenebaum—For Commission—Direct.

12115

Q. What is your occupation? A. I am vice president and general manager of Felix Lilienthal & Company, resident buyers, resident representatives.

Q. Where do they have their offices? A. 119 West Fortieth Street, New York City, N. Y.

Q. What is the name of that company, again? A. Felix Lilienthal & Company.

Q. Is that an independent organization, or is it owned by department stores? A. No, it is an independent organization.

Q. Is it a stock corporation or a partnership? A. Corporation.

Q. Organized under the laws of what State? A. New York.

12116

Q. How long have you been employed by that organization? A. Between fourteen and fifteen years.

Q. In what capacity during that period of time? A. Originally as buyer, then as manager, and then as vice president and general manager.

Q. How long have you been vice president and general manager? A. About twelve years.

Q. What types of merchandise does that firm buy? A. All types of merchandise.

Q. All types of merchandise? A. Yes.

Q. For what types of stores? A. For department stores and specialty stores.

Q. Where are your clients located? A. In various sections of the United States.

12117

Q. Do you buy ladies' and misses' ready-to-wear garments? A. We do.

Q. You do? A. Yes.

Q. Approximately how many clients do you have for whom you buy this merchandise? A. I would say more than 100.

Q. More than 100? A. Yes.

12118

*Milton J. Greenebaum—For Commission—Direct.*

Q. With respect to the nature of the business conducted by your clients, will you briefly describe for the record that business, indicating the type of merchandise of ladies' and misses' ready-to-wear that they handle? A. They handle everything in ladies' and misses' ready-to-wear, from \$1 cotton dresses up to the best merchandise that is manufactured.

Q. Of all lines? A. Yes, of all lines.

Q. By that, do you mean that they have a full line, some of them have a full line and some of them do not? A. No, we have some stores who buy more popular-priced dress merchandise. We have some stores that buy more cheaper-priced merchandise and we have some stores that buy mostly better merchandise.

12119

Q. Can you give us an illustration or an example of each of those classifications of department stores, just so that we might get an idea. A. Well, we have specialty stores, or stores in California which we represent, we have specialty stores in Oregon which handle only better merchandise, and nothing cheaper at all. The stores that buy some types—we have some stores that handle all types of merchandise, some handle the better merchandise upstairs and the low end in the basement, and some buyers have no basement and carry popular-priced and better merchandise in their upstairs' departments.

12120

Q. What is the practice as to the service that you render to these stores, the buying service in the New York market of this merchandise? A. We furnish them with market information and buy for them, when they are in New York we accompany them in the market at such times as they request it. We buy for them when they are not in New York themselves and while they are doing their purchasing in New York, if they desire us to, we will send a buyer around with them. We have a fashion service, and we have a complete buying service, and a promotional service also.

Q. Do you give them any assistance to see that their orders are filled? A. Oh, yes, we follow up deliveries on orders.

Q. How many employees do you have? A. About 115.

Q. How many of these employees are connected in the merchandising of this type—that is, by “this type,” I mean ladies’ and misses’ ready-to-wear? A. I would say about twenty-five to thirty. That includes the coat division.

Q. That includes the coat division? A. Yes, twenty-five employees; to about thirty.

Q. What is the custom as to the way in which you make your purchases—that is, do buyers go out to the manufacturers, or do manufacturers come to your place of business? A. Well, we have a great many manufacturers who call on us in the mornings in our sample rooms, and, of course, the buyers are out in the market from 10 o’clock to 10.30 in the morning until 5 o’clock or 5.30 purchasing merchandise.

12122

Q. Going to the manufacturers’ showrooms? A. As a matter of fact, most of the merchandise is bought in that way. There is very little bought in the office. If a sample is shown us and we think it is good, we go over to the manufacturers’ place of business and look at his stock.

Q. Did you ever—did you ever do any group buying; what is called group buying? A. What do you mean by group buying?

Q. Where you have manufacturers put on a show for your buyers and have your buyers all assemble in one place? A. We have had an operation of that type, but I do not think it is exactly in the way that some of the other offices work theirs.

12123

Q. Explain what it is. A. There are a great many different ideas on the way that it should be done.

Q. How do you do it? A. We have had group meetings at which we have had various manufacturers come to our office and show us our lines, but we have permitted the

12124

*Milton J. Greenebaum—For Commission—Direct.*

manufacturer to be present when his merchandise was being looked at and to explain the value of his product. And I understand some of the other offices do not permit them to, but simply have the merchandise to come up and view it without the manufacturer being there.

Q. Are you familiar with the Fashion Originators Guild of America, Inc., Mr. Greenebaum? A. I am.

Q. When did you first learn of its existence? A. I believe—well, the first time that I heard about it was, I guess, about the time that it was formed. I do not remember what the exact date was.

12125

Q. Were you ever asked by any of its officials to co-operate with the Guild in its so-called anti-style piracy campaign? A. Certain offices were, yes.

Q. When were you first contacted in that way? A. I think it was in the spring of 1933, as I recall it.

Q. Mr. Greenebaum, do you remember who it was that called upon you? A. The first time I remember any personal contact with the Guild was—I think it was in June of 1933 when we received our first declaration of co-operation which we were asked to sign.

Q. At that time, did you attend any meetings of representatives of buying offices and representatives of the Guild? A. I did.

Q. When the subject matter of this so-called anti-style piracy was discussed? A. I did.

12126

Q. When? A. I attended such a meeting shortly after we received this first declaration of co-operation, yes.

Q. Do you recall when this meeting was held? A. Yes, it was held about that time.

Q. Do you recall where this meeting was held? A. Yes, it was held at the office of the Mutual Buying Offices, Miss Glenby's office.

Q. Do you recall those who were in attendance at that meeting? A. I do not remember exactly all of them, but those whom I remember were Miss Glenby, John Block of

*Milton J. Greenebaum—For Commission—Direct.*

12127

Kirby, Block & Company, Mr. Bergdahl of the Associated Merchandising Corporation, either Charlie Weil or Mr. Gaynor, both of them of Weil & Hartman. I know Mr. Rentner was there and I think Mr. Golby, and Herbert Sondheim, and I believe Willie Bass.

Q. Were they dress manufacturers? A. Yes, they were representing the Guild.

Q. Do you remember the purposes of the meeting? A. We, as officers, asked to have a meeting with the officials of the Guild to discuss the matter of carrying out or co-operating with them in their plan because there were certain things in our mind which made it necessary for us to have some conference with them before we signed these declarations.

12128

Q. What was your understanding— A. I beg your pardon?

(The question, as amended, was read as follows:

“Q. Mr. Greenebaum, what was it that you had in mind, and what was it you had in view when you attended this meeting, what phase of co-operation did you desire to discuss or did you wish to hear discussed?”) A. When we received the declaration of co-operation, it called for an agreement on our part not to buy copies of Guild merchandise without clarification. The question immediately entering my mind, was what were we going to do on the lower-priced lines?

12129

Q. What price lines did that include when you say “lower-priced lines”? A. Price lines under \$10.75. That is, at the time there were only two price lines directly under \$10.75, which was \$6.75 and then \$3.75. In other words, at the time there were no \$7's or \$8's.

Q. What price lines were there about \$10.75? A. \$16.75, \$22.50 and then up.

Q. What price lines were the members of the Guild then making? A. I think mostly from \$22.50 up, some \$16.50 or \$16.75, I do not know which.

12130

*Milton J. Greenebaum—For Commission—Direct.*

Q. I, at this time, call your attention to Commission's Exhibit No. 92, and ask if this is the so-called "Declaration of Co-operation" that was submitted to you, as a buying office; or, was there something that was different from this? A. This was not the form that was submitted to us.

Q. This was not the form that was submitted to you? A. No. This was the result of the Association of Buying Offices' efforts afterwards.

Q. Presented afterwards? A. No, it was the first declaration of co-operation that everybody got. I do not think ours was any different from anybody else's. This, however, was not the one that was submitted to us.

12131

Q. I will show you another one. A. All right.

Q. I will now show you Commission's Exhibit 99-E and ask you if that is the one that you have in mind? A. That is it, I do not know whether it was in that exact form or not, but generally that was it.

Q. That was the substance of it? A. That was the substance of it. I do not know whether that was the exact form.

Q. Now, then, will you give in your own words the substance of the discussion that took place? A. What is that?

12132

Q. Will you give us in your own words the substance of the discussion that took place at this meeting that you have referred to that was held in June in the Mutual Buying Offices and that was attended by all those you have named? What was said by you? What was said by them? What was said by the Guild manufacturers? What was said by the other representatives of buying offices? A. Well, at the beginning of the meeting I think Mr. Rentner who was more or less for the Guild group at that time, explained in a general way what was expected of the buying offices, and I think all of them present were; that is, all of the offices then present were in sympathy with the Guild program to curb style piracy. We called

*Milton J. Greenebaum—For Commission—Direct.*

12133

him—we told Mr. Rentner and the other manufacturers that our only—that our principal problem in co-operating was to overcome the problem that was presented by having our stores agree not to handle copies of Guild merchandise in the \$6.75 and the \$3.75 price ranges when the chain stores, a chain store, or those stores handling only that price range which could not be controlled would be in competition with us. So Mr. Rentner said that if that was our only objection, that that was not even worth worrying about because they were not interested in copies of dresses below \$10.75; that that was the price range in which the copies of Guild dresses were most prevalent and where they were having the most trouble, and that in his opinion he did not feel that a Guild dress could be copied at less than \$10.75 and still look enough like the original dress to spoil the sale of the original dress. When we received that assurance we said that was all that was worrying us, and we would be perfectly willing to sign the Guild pledge all the way through, which we did, at least, I mean speaking for all of our stores.

12134

Q. Well, now, at that time, did your buyers— A. What?

Q. Strike that out. Was there any particular reason for you or your clients taking any action at that time in signing the declaration of co-operation? A. Yes, because the spring season was just starting and the buying season started early in July, around possibly the 10th or 15th of July, and it had to be settled before our clients came to New York.

12135

Q. You say the "spring" season? A. I mean the fall season. Pardon me.

Q. Why was that necessary? A. Because unless the businesses, unless the fundamental retail stores signed the declaration, they would not be allowed to go into the showrooms—Guild member showrooms.

12136

*Milton J. Greenbaum—For Commission—Direct.*

Q. How do you know that to be a fact? A. What do you mean by that?

Q. How do you know that to be a fact? A. Well, our buyers reported back to us that they were told that by the manufacturers, and it was also our understanding given to us by Mr. Rentner and by the Guild.

Q. Would that have any effect upon the business of your elients? A. Oh, naturally.

Q. In doing business? A. Yes.

12137

Q. You say "oh naturally." Explain that for the record, please. A. Well, the manufacturers who were the members of the Guild were at that time and still are the leading manufacturers in their price fields. There are manufacturers whose merchandise we could not get along without in our ready-to-wear division, in our opinion.

Q. Can you elaborate on that and tell us why you could not get along without them? A. Well, in order to have a successful better ready-to-wear business you have to deal with the best manufacturers and the best manufacturers were members of the Guild.

Q. They were the best manufacturers from what standpoint? A. From the standpoint of their product, and the saleability of their product.

Q. In your judgment and opinion, what percentage of the manufacturers of garments of, say \$16.75 and up, were included in the Guild at that time?

12138

Mr. Albert: I object as no proper foundation has been shown as to this witness' knowledge to any such question.

Examiner Averill: Objection overruled. Your objection goes to the weight of the evidence rather than its admissibility.

Mr. Albert: Exception.

Examiner Averill: Noted.

A. I do not think I can answer that question—intelligently—as to the exact percentage, or nearly exact percentage because that is a little too long ago, and I do not remember all the houses.

Q. What percentages of your clientele require the merchandise of these Guild manufacturers, or did at that time? A. Well, any store that handled merchandise in the Guild price line, and that was the great majority of them, certainly wanted to buy from Guild houses.

Q. Well, as a result of that meeting, did you request of your clients that signing of the so-called declarations of co-operation? A. We did, and as a matter of fact we secured permission and signed Guild declarations for certain of our clients who did not happen to be in New York when it was necessary.

12140

Q. Well, now, what was the extent of the co-operation in 1933 and 1934, we will say, given by your organization in the so-called anti-style piracy campaign, if any? A. We co-operated to the fullest extent.

Q. By the return of garments? A. Any of our stores that were asked to return garments I am sure returned them.

Q. Were you requested to return garments in the lower-priced brackets? A. No.

Q. During those years? A. No.

Q. Did there come a time when you were requested to return garments in the lower-priced brackets? A. Yes, sir.

12141

Q. When was it? A. Well, that was a normal development of the Guild program.

Q. What? A. That was a normal development of the Guild program.

Mr. Albert: May I ask that be repeated, please?  
(Answer read.)

Mr. Albert: I did not hear the answer. I was listening to something else, your Honor.

12142

*Milton J. Greenebaum—For Commission—Direct.*

The Witness: That was a normal development of the Guild program.

Mr. Albert: Thank you, Mr. Greenebaum.

Examiner Averill: Do you want it read again?

Mr. Albert: No.

12143

A. That was the normal development of the Guild program when they were—when they had manufacturers in there who only made merchandise from \$16.75 and up, the \$6.75 firms and lower-priced lines did not bother them, but shortly after they took in the sportswear group, which takes in merchandise down to \$6.75, then the problem of protecting their merchandise became more acute, and then the \$10.75 situation arose. And, of course, when that arose that affected the price lines immediately below these lines—that is to say, the \$7, \$8 and \$6 lines, and they were faced with the problem that caused these manufacturers—in other words, with the problem that because these manufacturers wanted protection, the Guild asked us to return merchandise all the way down.

Q. When was it that you first learned that the \$10.75 group came in the Guild as members? A. The first thing I knew about it was the article appeared in "Women's Wear" on the subject.

Q. About when was it? A. It was in the spring of 1935—March or April, I do not know exactly the month.

12144

Q. At that time was there such an organization as the Associated Buying Offices? A. Associated Buying Offices?

Q. Yes. A. Yes.

Q. Was your organization a member of that organization? A. It was a charter member.

Q. Did you attend any meeting of the Associated Buying Offices at which this matter of including the \$10.75 group of dress manufacturers in the Guild, and as members of the F.O.G.A. was discussed? A. I attended several.

*Milton J. Greenebaum—For Commission—Direct.*

12145

Q. I show you Commission's Exhibit No. 862 and ask you if you can identify that as minutes of such a meeting that you attended, or of a meeting at which you attended, and if so, what your recollection was? A. Well, this was a letter written to Mr. Post and Mr. Rentner commenting on the fact that the Guild was considering taking in the \$10.75 dress manufacturers as affiliates. It is not minutes of a meeting but a letter written at a meeting, however.

Examiner Averill: No, I just noticed that this was not minutes but apparently a letter.

Mr. Haycraft: The witness has corrected that in his answer.

12146

*By Mr. Haycraft.*

Q. Did you have anything to do with the writing of that letter? A. I did and I was there when it was written.

Q. And who wrote it—that is, what group or what organization? A. The Association of Buying Offices.

Examiner Averill: Let me see that for a moment. Off the record.

(There was a discussion off the record.)

*By Mr. Haycraft.*

Q. I now show you Commission's Exhibit No. 863 and ask you if you can identify that in any way—that purports to be a letter from the A.B.O. to Mr. Rentner, and under date of April 5, 1935. A. Yes, I remember this.

12147

Q. Did you attend the meeting referred to in that letter? A. Yes, I did.

Q. Was that the meeting referred to in that letter—was that a joint meeting of representatives of the Associated Buying Offices and of the Guild? A. Yes, sir.

Q. Do you have any independent recollection of who attended that meeting? A. No, I do not remember off-hand. I do not remember.

12148

*Milton J. Greenebaum—For Commission—Direct.*

Q. Do you have any independent recollection of the discussion that took place at that meeting? A. Yes.

Q. Does your recollection coincide with this exhibit, or does it differ from it, referring to Commission's Exhibit No. 863? A. That is exactly my recollection of what occurred.

Q. I now show you Commission's Exhibit No. 865, the original letter from Mr. Post addressed to the Association of Buying Offices under date of April 23, 1935 and ask you if you ever have seen that before? A. What?

Q. If you ever saw that before? A. This is a letter that was written at an Association of Buying Offices' meeting.

12149

Q. Now, I show you Commission's Exhibit 866, purporting to be a letter from the Association of Buying Offices to Mr. Renitz, April 27— A. I do not think that is the one that you refer to. You mean this one here?

Q. Yes. I did show you the wrong one. I have reference here to Commission's Exhibit No. 866, this purports to be a letter from the Association of Buying Offices to the Guild, under date of April 27, attention of Mr. Post, in reply to a letter of April 23, to which I have already called your attention, and ask you if you can identify this exhibit in any way? A. Yes, I was present when this letter was written also.

Q. Did you serve on a subcommittee of the Association of Buying Offices which had to do with Guild affairs? A. Yes, sir.

12150

Q. Who else was on that committee with you? A. Mr. Bergdahl and Mr. Lipman, but Mr. Lipman was not active.

Q. Did you have any part in the formation of this letter, Commission's Exhibit No. 866, the language that is in it? A. Yes, I did.

Q. Would you say it was a joint effort of yourself and Mr. Bergdahl and Mr. Kleinert? A. I do not remember, but I think so. Mr. Kleinert did most of the dictating to the girl. This letter here is a letter apparently from Mr.

*Milton J. Greenebaum—For Commission—Direct.*

12151

Kleinert, from the Association of Buying Offices, and is addressed to the Guild, to the attention of Mr. Post, in reply to the letter of April 3, this one over here.

Q. Yes, I think we have identified that pretty well now. Were you at that time in accord with the statements made in that letter? A. Yes.

Q. Do you recall that subsequently you wrote—subsequent to the writing of this letter you were at another meeting—your committee had another meeting—a sub-committee had another meeting with representatives of the Guild on May 4, 1936? A. Well, if you will tell me where that took place—

Q. I show you Commission's Exhibit No. 867, to refresh your recollection. A. Why, this is the meeting that took place in Mr. Swinney's office, yes.

12152

Mr. Albert: The Specialty Stores office?

The Witness: Yes, I remember that.

*By Mr. Haycraft.*

Q. That came right after your meeting that you had? A. Correct.

Q. Do you recall attending that meeting? A. I do.

Q. Do you recall who attended the meeting that Commission's Exhibit No. 867 purports to be the minutes of? A. Well, I remember Mr. Bergdahl, Mr. Swinney, Mr. Post, Mr. Reinitz and myself, and it seems to me one other person. It was on a Saturday morning.

12153

Examiner Averill: Mr. Reinitz.

Mr. Haycraft: Yes, Mr. Reinitz.

*By Mr. Haycraft.*

Q. Who was Mr. Reinitz at that time?

Q. Who was Mr. Reinitz at that time? A. Mr. Reinitz was acting as the publisher of a trade publication and

12154

*Milton J. Greenebaum—For Commission—Direct.*

also as publicity director, I believe, of a number of manufacturing organizations.

Q. What kind of a magazine? A. A trade magazine.

Q. When you say "trade magazine," what trade magazine do you refer to? A. He called it the "Review." He published the "Review."

Q. What, if anything, did he have to do with the Guild activities at that time, and at that meeting especially?

Mr. Albert: That is objected to as calling for the conclusion of the witness, and no proper foundation laid.

Examiner Averill: Objection overruled.

12155

Mr. Albert: Exception.

Examiner Averill: Noted.

A. At that particular meeting in Mr. Swinney's office, Mr. Reinitz was representing, I believe, both the Guild and the \$10.75 group. At least he talked for both.

*By Mr. Albert.*

Q. Then, he did speak at the meeting? A. Yes, sir.

Examiner Averill: He was not there simply in the capacity of a reporter gathering news for his publication?

12156

The Witness: No, sir; he was representing the \$10.75 group here and also representing the Guild to the extent that he talked with the—he talked for the Guild—I do not know that he was their accredited representative there or not, but I assume that he was because he spoke for them.

*By Mr. Haycraft.*

Q. Was there anybody else there for the \$10.75 group?  
A. No, sir.

*Milton J. Greenebaum—For Commission—Direct.*

12157

Q. I show you Commission's Exhibit No. 871, which purports to be a copy of a letter from the A.B.O., and addressed to Mr. Reinitz, dated May 13, 1935, and ask you if you can identify that? A. Yes, I remember this. I did not finish my other question. He spoke for both the Guild and for the \$10.75 group, and it was my understanding that he represented both of them at that meeting.

Q. I see. Did you have anything to do with the dictation of that letter? A. Yes, I was present when it was written and offered my suggestions.

Q. When these discussions took place, do you recall receiving any letter from Mr. Post with respect to the subject matter of this correspondence to which I have just directed your attention—showing you Commission's Exhibit No. 873 and asking you if you can identify that as a letter from Mr. Post, dated June 21, 1935, with respect to this same subject matter? A. Yes, sir.

12158

Q. Was that written at any of the meetings that you attended? A. Yes, it was written at one of these meetings.

Q. I show you Commission's Exhibit No. 900, which purports to be a copy of an original letter sent to Mr. Post in reply to his letter of June 21, Commission's Exhibit No. 873 to which I have just directed your attention; this is the letter, Commission's Exhibit 900, being dated August 3, 1935, and ask you if you were a member of the special committee which purported to have signed that letter and sent it to Mr. Post; at least, the special committee which purported to have sent the letter to Mr. Post? A. Yes, I acted in that matter together with Mr. Bergdahl, as a special committee.

12159

Q. Now, then, sir, I will call your attention to the following language appearing therein: "We have your letter of June 21 in which you state the reaction of the board of directors of the Fashion Originators Guild of America to the recent proposal submitted to you by the Association

12160

*Milton J. Greenebaum—For Commission—Direct.*

of Buying Offices, Inc., in regard to the extent of its co-operating with you in connection with taking in \$10.75 manufacturers as associated members.

"This is to inform you that the members of the Association of Buying Offices, Inc., will endorse this movement on your part to its member retailers. It is understood, of course, that we are doing this based upon the conclusions arrived at through the many conferences we have had in which we have stated our problems.

12161

"It is our intention to actively support the style piracy prevention efforts to the fullest extent, and we will rely to an equal degree upon your co-operation." This is signed by the Association of Buying Offices, Inc., by special committee. What did you have reference to where you said, "It is understood, of course, that we are doing this based upon the conclusions arrived at through the many conferences we have had in which we have stated our problems." A. Well, when Mr. Post met with us at a regular luncheon meeting of the Association of Buying Offices, Inc., and discussed with us the matter of the \$10.75 manufacturers, he mentioned the fact that it would be necessary for the Guild to extend its program to a lower-priced brackets. There were various conferences about it and the thing that we were particularly concerned about was the \$4.75 price line because this is the price line that was very important in our stores in stores having basement departments, and in some of them upstairs.

12162

In some stores it was the lowest price line carried in the basement department, and in other stores it was the lowest price line carried on the first floor, and it was a very, very important price line particularly in view of the fact that the chain ready-to-wear stores were concentrating on that price line in their retail sales. We mentioned the fact that it would be impossible for us to co-operate fully in that price line because of the fact that there would not be enough, and there could not be enough styles originated

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12163

—in other words, there could not be enough style-originated merchandise and could not be for quite some time— as a matter of fact, there were not enough designers available, in my opinion, to organize the \$4.75 group so that they could manufacture style-originated garments, and that until such time as the market was in a position to supply us with enough style-originated merchandise at that price we felt that the Guild must do something to help us out with this problem, and while I understand that there was some comment on the part of the Guild member representatives against the leniency, that was the sense of what was decided upon, that the Guild would be most lenient in their activities against stores returning merchandise costing \$4.75 and below.

12164

Examiner Averill: You mean, less activities against stores who did not return the merchandise?

6

The Witness: Correct. As someone put it to us —I believe it was Mr. Post, I am not sure, in explaining what that would mean by co-operating stores and unco-operating stores, that statement would mean that if a store found a different subterfuge for not co-operating and returning copies every time they were asked to return copies, that they would be considered a store that did not want to co-operate with the Guild program and steps would be taken accordingly, but if stores who had shown their good faith in returning copies where they were asked to return copies, where they were asked to do so, and they complied in the returning of the copies, they would be considered as co-operating even if they did not return all of the copies that were found in the stores, but if they just returned the copies as they were requested to return. When we decided that we would withdraw any ob-

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12166

*Milton J. Greenebaum—For Commission—Direct.*

jection to their including the \$10.75 group, it was done with that idea in mind; that is what that language meant.

Q. Well, then, as a matter of fact, the \$10.75 group went into the Guild about that time, did they not? It was soon after August. A. I do not remember the exact date, but, yes, it was around that time.

12167

Q. Did you have any further discussion, then, with representatives of the Guild as to the problems that you had in returning merchandise that your stores had? A. Well, of course, we had some conversations, but I think they were very familiar with our position, and after the time they were in sympathy in trying to help us work out the problem and work out their problem at the same time.

Q. Did you have any arrangement with respect to the percentage of garments that might be returned during the course of the month? A. I think that came up some time later. Some time later that subject was brought up.

Q. When did that come up? A. It was after August. I do not know. It may have been September or October.

12168

Q. What was the occasion, what prompted it? A. Well, we had a meeting with some of the Guild people—I believe it was in the Guild office, and I think Mr. Bergdahl and I were present—I do not know about—I do not know who else—and we discussed the matter of the percentage of stores' returns, and, as I remember it, the understanding was that no stores should be asked to return more than 5 per cent. of their stock in any given month in their basement department and/or any department all over the store for that period 3 per cent. was sufficient. That is as near as I can recall what the agreement was. In other words, they could return 5 per cent. of their stock in any given month in their basement department, or they could take all of the departments all over the store for the same period of time and return 3 per cent. and be considered as in co-operation.

*By Examiner Averill.*

Q. You mean, of their entire stock of dresses? A. Of their entire stock for any given month, 5 per cent. of their stock.

*By Mr. Haycraft.*

Q. The entire stock in the basement of their store? A. It depends on where they carry their lower-priced merchandise.

*By Examiner Averill.*

Q. The lower-priced merchandise, is that what you have in mind? A. Yes, for the 5 per cent.

12170

Q. I mean, for this 5 per cent. of the stock that was in the lower-priced ranges, but not 5 per cent. of all the stock of the store? A. No, sir. That was 5 per cent. of the lower-priced ladies' and misses' ready-to-wear stock.

Q. That is what I wanted to get at. Thank you. I do not think the record was clear as to that. A. Of course, that is correct, Judge.

*By Mr. Haycraft.*

Q. Was there any time limit put on this 5 per cent. arrangement? A. No, there was no particular time limit.

Q. How long did that remain in force? A. I really do not remember.

12171

Q. Did there come a time when it was abandoned or rescinded? A. Well, there came a time when the Guild said that they could not make any further exceptions—that they could go no further—in one of these words—that the program had to be held to more closely conformance, and that they did not want to grant these exceptions as freely as they had in the past.

Q. Did your organization have any discussion with the Guild manufacturers, or the representatives of the Guild,

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*Milton J. Greenebaum—For Commission—Direct.*

as to the inclusion of \$6.75 merchandise in the Guild program? A. You mean the Association of Buying Offices?

Q. Yes. A. Yes, it was in a general way. It was my feeling personally that it would be very advantageous for us to have this Guild program if they were able to get in the \$6, \$7, \$8 and \$4 ranges, if they could get them to conform through their own groups which would be formed similar to the \$10.75 group, and I thought that would solve the entire problem.

Q. Did you take steps to assist in doing that? A. I did.

Q. What did you do? A. I attended the meeting of the \$6, \$7 and \$8 manufacturers and at a dinner meeting I gave them my views as—

12173

Q. At what time was that? A. I think that was in October, 1936.

Q. Where was that held? A. At the Hotel New Yorker, if I remember correctly.

Q. Who were in attendance? A. A number of the manufacturers of the \$6.75, \$7.75 and \$8.75 ranges.

Q. Who besides yourself was present there? A. Mr. Bergdahl and myself were there to speak.

12174

Q. Representing the buying offices? A. We were down there representing the A.B.O. and, off the record, I did not represent my firm, I should say, but I told them that it was my feeling that we were fairly well known by reputation in the market, and we felt sufficiently strong regarding the value of having them join that we felt we would give them our opinion to them for what it was worth.

Q. Do you recall what you said to them or what you told them at that time? A. Well, I have no recollection of the words I used, except I told them that I thought it was to their definite advantage to join in the Guild program and begin to originate their own merchandise. I pointed out that since the \$10.75 group had stopped their copying and had started to originate their own styles that it had benefited their industry, and I felt that it would

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12175

do the same with this group that we were talking about. I told them that we would be, as far as the Associated Buying Offices were concerned, I felt we would be co-operative with the manufacturers who designed their own merchandise, and that we could all work together for our mutual benefit.

Q. Do you recall what Mr. Bergdahl told them at that time? A. He told them substantially the same thing in his own words and for his organization.

Q. Was any action taken at that meeting which occurred between the \$6.75, \$7.75 and \$8.75 manufacturers and yourselves? A. Well, I left before there was any action taken, but I was told the following day that a substantial group of them had decided to join the Guild program that evening.

12176

Q. Subsequent to that time, you learned definitely that they did? A. Yes, sir; certainly, a number of them did.

Q. Did you do anything to get the \$4.75 manufacturers lined up in the Guild program? A. Yes.

Q. You did? A. Yes.

Q. What did you do in that respect? A. Well, in the first place I attended a meeting of theirs by invitation, and discussed the thing at some length from the floor. Shortly after that, they notified us—that is, Mr. Dubrile, one of the assistant directors, notified certain members of the A.B.O. that the principal volume group of the \$4.75 manufacturers had formed themselves together in an endeavor to originate their own merchandise and join in the Guild program.

12177

Q. Do you remember when they met and where the meeting was held? A. I do not remember the date. I know that it was some time in the fall of the year.

Q. Was that in October? A. I think it was. I know it was in the fall some time.

Q. You do? A. I do.

Mr. Albert: 1935 or 1936?

The Witness: 1935.

12178

*Milton J. Greenebaum—For Commission—Direct.**By Mr. Huycraft.*

Q. 1935? A. Yes.

Q. Well, first, who else besides yourself of the Associated Buying Offices representatives was there? A. At this meeting there were representatives from practically every buying office—every important buying office.

Q. Did they all talk as you did to them? A. They did.

Q. Did any of them have divergent ideas? A. No.

Q. Was there any result of that meeting, and if so what?

12179

A. The \$4.75 men flatly refused to agree to originate their own styles because they said—you understand, that the way this thing went about, Mr. DuBrile, one of the associate directors, invited certain members of the A.B.O. and the principal volume group of the \$4.75 manufacturers, to meet at his office in an endeavor to get them to originate their own merchandise and join in the Guild program. I was not sure from my previous answer whether you might get the idea that the \$4.75 people themselves had formed themselves into an organization for that purpose.

12180

Q. Yes, that is the idea I got. A. That is not right. The invitation was extended by Mr. DuBrile and they met and had this meeting at which there were representatives from that \$4.75 group, and also, as I said before, representatives from practically every other buying office in New York, certainly every important one. At that meeting the \$4.75 men, as I said, flatly refused to agree to originate their own styles because they said they worked on very low profits, on nickel profits, and could not afford to have designing staffs, and that it would slow up their production and they needed too many styles, and their merchandise turned over so quickly that it was a physical impossibility for them to design their own merchandise, and therefore that they would not want to join in, that they would not only refuse to do so but they would refuse

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12181

to accept orders from retailers bearing the stamp requiring them to receive returns if they were copies of Guild merchandise.

Q. Do you recall what this stamp had on it?

Examiner Averill: Oh, just refer to that as the warranty stamp; everybody knows what that is.

The Witness: Requiring them to accept returns from retailers.

*By Mr. Haycraft.*

Q. That is, the warranty stamp? A. Yes, sir; the warranty stamp.

Q. Did you do anything with respect to the \$4.75 manufacturers or did you continue to buy from them? A. Yes, we continued to buy from them.

Q. What effect did that have on the \$6.75 manufacturers that were in the Guild? A. Well, the \$6.75 manufacturers subsequently resigned from the Guild, a great many of them, because they felt that their merchandise could not be protected because of the standards that the \$4.75 group had set, and because the \$4.75 group were copying their merchandise.

Q. In other words, the \$4.75 group of manufacturers manufactured substantial quantities of dresses that was said to be copies of the \$6.75 manufacturers' production? A. So the \$6.75 manufacturers contended.

Q. When do you recall that this group of \$6.75 manufacturers withdrew from the Guild? A. I have no recollection of the approximate date.

Q. Since that time, or whenever it was, did your clients return garments to \$4.75, \$6.75, \$7.75 and \$8.75 manufacturers that are or had been adjudged Guild copies? A. Yes, we do. As a matter of fact, instead of using the Guild warranty stamp on our order blanks, when we happened to need new order books we had it printed right on the back of our order book.

12182

12183

12184 . *Milton J. Greenebaum—For Commission—Direct.*

Q. What effect does that have upon the business of your clients, in your opinion, as to their ability to compete with dealers—that is, retail dealers who do not co-operate with the Guild in the Guild program of style protection? A. Well, they, as individuals and I, personally, have always maintained that it is an inequality if our stores find it necessary to return copies of Guild dresses where our competitors who do not handle the higher-priced garments, and who do not have to, and who do not, therefore, sign up with the Guild, can handle such merchandise, and do not have to return it.

Q. Why do you say—

12185

Mr. Albert: I ask that the answer be stricken as not responsive to the question, and ask that the question be directed to the witness again and the witness directed to answer the specific question.

Examiner Averill: Read the question.

(Question read.)

Examiner Averill: I think it is responsive to the question. It may be a little long. That is the only objection to it that I see. Objection overruled.

Mr. Albert: Exception.

Examiner Averill: Noted.

*By Mr. Haycraft.*

12186 Q. Why do you feel it is an inequality—what do you mean by that? A. Well, if all the retailers were in the same position in regard to the return of lower-priced merchandise that might be adjudged copies of Guild dresses, I think the thing might work out perfectly. As a matter of fact, I have always been in favor of the Guild program. I have been in favor of curbing style piracy and I was one of the advocates of having an anti-style piracy clause written into the code when there was a code, but when

*Milton J. Greenebaum—For Commission—Direct.*

12187

we were faced with the necessity of restricting our dresses purchases, or, rather, our purchases to the necessity of returning merchandise which we purchased, because they were copies of Guild dresses, which dresses were admittedly good dresses because they are copies of Guild merchandise, and which are handled by chain stores which may be next door to our stores, and have these very dresses for sale, I consider that an inequality and that is what I meant by "inequality."

Q. Are you familiar with any of the other activities of the Guild aside from their anti-style piracy activities, referring particularly to the so-called trade practice rules?

A. I know of the fair trade practice rules; yes, sir.

12188

Q. I show you Commission's Exhibit No. 874 and I will ask you if that is a statement of the rules as you understand them?

Mr. Albert: That is objected to as being incompetent, immaterial and irrelevant. The matter is in evidence and the extent of the witness' knowledge with respect to that, or his belief, is entirely immaterial. If Mr. Haycraft wants to ask what objections this witness would or does take, he may make the point on that, but we have had six months of testimony in this matter already and I do not think we should have any further identification of exhibits already in evidence. We can save a great deal of time in this proceeding if Mr. Haycraft would just go right ahead. I will let him ask this witness anything he wants to, so long as it is at all within the issues of the case.

12189

Examiner Averill: Read the question.

(Question read.)

Examiner Averill: I cannot see any objection to that question. I do not see how he could introduce the matter any other way except by some way

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*Milton J. Greenebaum—For Commission—Direct.*

which would be open to serious objection if you desired to make it. Of course, if you gentlemen wish to curtail the evidence, very well, and I wish to say to you that I will be very glad to co-operate with you, but that will have to be by way of agreement. I think the question is fair as it stands. Objection overruled.

Mr. Albert: Exception.

Examiner Averill: Noted.

*By Mr. Haycraft.*

Q. Answer the question. A. What is the question?

12191

Mr. Haycraft: Let the question be read.

Q. (Question read.) A. Yes.

*By Mr. Haycraft.*

Q. Were you or your organization, the Association of Buying Offices, consulted as to the emunciation of this rule or rules before they were announced by the Guild? A. No.

Q. In your opinion, do any of them have any effect on your business—that is, the business of retail dealers? A. As such, there are practically none of these that I would have any objection to. The objection I made, personally, was from another angle entirely.

12192

Q. What objection did you make?

Mr. Albert: That is objected to as to what this gentleman's personal objections were. I think we are interested, of course, in his objections as a representative of his association, but I do not think we would be interested in differentiation of the two objections.

The Witness: I might say that my objections were the objections of the Association.

Mr. Albert: I have no objection at all to those. When you said "personal," I thought you meant personally as differentiated from your Association. Objection withdrawn.

*By Mr. Haycraft.*

Q. Answer the question. A. What is the question?

Q. (Question read.) A. Our reason for being opposed to the inclusion of these rules were, of course, on the basis of the fact that the Guild—that the Guild program, in the first instance, that the Guild itself is a co-operative proposition and it depends upon the manufacturers' and retailers' co-operation for the strength of the Guild program, and if the Guild does that we do not feel that we should be called upon to support this type of program unless we had some say in the making and passing of these resolutions, because our co-operation was the thing that made it possible for the Guild to enforce these regulations.

12194

*By Examiner Averill.*

Q. That is, I understand your testimony in your opinion that it is a practicable thing to endeavor to enforce co-operation against style piracy in the \$10.75 group, but that when it comes down to the \$4.75 and \$6.75 groups, that then on account of the reasons that you have stated it becomes more and more difficult, if not almost entirely impracticable; is that so? A. That is exactly the point that I have tried to convey.

12195

Examiner Averill: Thank you.

*By Mr. Haycraft.*

Q. Referring back, for a moment, to the meeting that you had with members of the Guild in June, 1933, when Mr. Rentner made the statement that you referred to about

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*Milton J. Greenebaum—For Commission—Direct.*

the lower-priced merchandise, was there anything said at that meeting as to whether or not—or, subsequent to that meeting, by Mr. Rentner, as to the advisability of the buying offices advising the retailers of that arrangements? A. It was requested of Mr. Rentner, or, rather, by Mr. Rentner, that the declaration carry some words to that effect, but as he stated he felt it was unnecessary because they—because of the fact that they were not at all interested in merchandise manufactured at less than \$10.75 price, and that it should be understood between the offices and the Guild, and that they could tell their friends personally about it, but that he did not want to have anything in writing because it would just lay the low-priced lines open to unrestricted copying.

12197

Q. I did not quite catch that answer. Would you mind repeating it? A. I say, it was requested by Mr. Rentner that the declaration carry some words to that effect.

Q. By Mr. Rentner? A. No, I beg your pardon, it was requested of Mr. Rentner that the declaration carry some words to that effect.

Q. Yes. But, as he stated as he felt it was unnecessary to do that, we asked him why, and he said because of the fact that they were not at all interested in merchandise manufactured at less than \$10.75 cost price, and therefore it could be understood between the offices and the Guild, and that the offices could tell our stores personally about it, so that it would be understood, but that he did not want to have anything in writing to that effect, because it would surely get out, and it would just lay the lower-priced lines open to unrestricted copying.

12198

Q. Did he at that time say that there was any time limit on the arrangement that you had with him on that? A. He did not.

Q. And you—

By Examiner Averill.

Q. When you say "arrangement," I imagine you refer to the arrangement that has been referred to in the testimony as "leniency"? A. I beg your pardon.

Mr. Haycraft: No, before the leniency, the exemption.

Mr. Albert: Mr. Haycraft is now back in 1933.

Mr. Haycraft: 1933.

Examiner Averill: I see.

Mr. Haycraft: Leniency came in 1935.

Examiner Averill: Proceed.

By Mr. Haycraft.

Q. To your knowledge, did Mr. Rentner ever repudiate the statement that he made in that meeting as you have narrated it?

Mr. Albert: That is objected to as calling for the conclusion of the witness.

Examiner Averill: I do not think so. We may find out something further by the witness' answer.

Mr. Albert: Exception.

Examiner Averill: Noted.

By Mr. Haycraft.

Q. Answer the question. A. To my knowledge, he has never denied making the statement and making the arrangement. 12201

Q. And I believe you said that Mr. Rentner stated he did not want to have anything in writing because it was just laying the lower-priced lines open to unrestricted copying? A. That was his statement.

Q. Did you, as a matter of fact, pass on that to your clients; that is, the retailers which you referred to and whom you represented—that is, the substance of that ar-

12202

*Milton J. Greenebaum—For Commission—Direct.*

rangement at that time? A. Yes, I definitely did. I informed them of what Mr. Rentner said in that regard.

(Whereupon, at 12.30 o'clock P. M., a recess was taken until 2 o'clock P. M. of the same day.)

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AFTERNOON SESSION—2 P. M.

MILTON J. GREENEBAUM resumed the stand and testified further as follows:

12203

*Direct examination (continued) by Mr. Haycraft.*

Q. Mr. Greenebaum, in any conversations with your organization, did any of the officials of the Guild indicate that they did not want you to buy from certain avowed copyists or manufacturers? A. Yes.

Q. Who made such requests? A. I think Mr. Goldston at one time made it; I believe—I think Mr. Golby also. I am not sure about Mr. Golby, but I know Mr. Goldston on several occasions did.

Q. Do you remember the names of the firms that were mentioned? A. I do not remember them offhand, but I can get that information. I think I kept the memorandums of them at the time and discussed it with our buyers.

Q. Did you comply with the request in that respect? A. Yes, I complied with those requests.

12204

Q. But you do not remember now the names of the manufacturers? A. No, I do not remember offhand.

Q. Are any of the names given in that exhibit? A. I do not recall.

Q. Was the Harris Dress Company one of them? A. Well, they were one of the regular copyists, but I do not remember whether they were one of the names discussed on the telephone or not. They were regarded as copyists, I should say.

*Milton J. Greenebaum—For Commission—Direct—Cross.* 12205

Q. They were? A. They were.

Mr. Haycraft: That is all at this time, but I will ask the witness to make a search and refresh his recollection and then come back to-morrow on that.

The Witness: I will be glad to do so.

Mr. Haycraft: You may cross-examine.

*Cross-examination by Mr. Albert.*

Q. Mr. Greenebaum, in answer to the last question of Mr. Haycraft, you stated that you had been requested not to buy from avowed copyists. A. Yes.

Q. What does the word "copyists," from your knowledge of the industry, mean to you? A. A man who copies a higher-priced garment for his own use. 12206

Q. That is, he does not design the line himself? A. No.

Q. But who takes his ideas from models and designs that have been originated by others? A. Yes, sir.

Q. That is what you mean by copyists? A. Yes, sir.

Q. Do you recall exactly the language that was used by either Mr. Goldston or Mr. Golby in making these requests of you, or, rather, not exactly, but the substance of it? A. Yes, sir; to this extent, that Mr. Goldston mentioned the dress house, whoever the name happened to be, I do not remember exactly who it was—

Q. Yes. A. And he mentioned the fact that this man was a habitual copier of Guild merchandise—

Q. Yes. A.—and that he, in spite of all requests to come up to the Guild office— 12207

Q. Yes. A. —and attend meetings, would not make his appearance.

Q. Yes. A. And insisted upon copying Guild merchandise continuously.

Q. Yes. A. He asked us that pending some information from this manufacturer, that we not buy from him.

Q. Was that made to you, personally? A. Yes.

12208

*Milton J. Greenebaum—For Commission—Cross.*

Q. Is it not a matter of fact, Mr. Greenebaum, that what occurred was this: These avowed copyists had refused to recognize and keep the warranty clause or acknowledge the warranty clause that was placed upon orders, and would refuse to accept back the dresses which had been adjudged copies? A. That was one of the points, also.

12209

Q. Is it not a fact that what was suggested to you is that the only way that you could protect yourself from the manufacturer who refused to recognize the warranty clause was to refuse to do business with that man, especially in the light of the fact that that man was an avowed copyist and you, in the ordinary course of business, would be required to return merchandise to that manufacturer if it were adjudged to be a copy, and if he had refused to accept it back you would find yourself in a very analogous situation? A. The words that you use and the statement that you make were not used in the conversation, but that was the assumption, nevertheless.

Q. After all, you are an experienced man in the dress industry? A. Yes.

Q. And Mr. Goldston and Mr. Golby are also experienced men in that line? A. They are.

Q. In discussing a problem of that kind—that is, in discussing a fundamental, elementary principle upon which action is predicated—that is what you were doing; is that so? A. Yes, on that point.

12210

Q. Is it not a fact that the purpose of the warranty clause was not mentioned because that was the fundamental basis of the discussion—that was the fundamental basis of the discussion, was it not?

Mr. Haycraft: I object as calling for a conclusion.

Examiner Averill: Objection overruled.

Mr. Haycraft: Exception.

Examiner Averill: Noted.

*Milton J. Greenebaum—For Commission—Cross.*

12211

A. If it were not for the warranty clause, they would not have called us up at all.

*By Mr. Albert.*

Q. Exactly. A. The fact that we signed the declaration of co-operation was based on that.

Q. Since they refused, these copyists, to acknowledge the warranty clause, your only protection to yourself, in your desire to return goods, was to refuse to continue to do business with them; is that so?

Mr. Haycraft: I object.

Examiner Averill: That question is all right. I will allow it. The objection is overruled.

12212

Mr. Haycraft: Exception.

Examiner Averill: Noted.

*By Mr. Albert.*

Q. Answer the question. A. We prevailed upon the manufacturers to accept back merchandise without resorting to that, usually.

Q. So that in the particular instance where you could not prevail upon the manufacturer to accept back his dresses which are copies, your only protection is to refuse to do business with him; is that so? A. I would say so.

Q. You have testified that there was a certain meeting of the \$4.75 dress manufacturers in October of 1935. A. Yes.

12213

Q. You recall where that meeting was held? A. At the offices of the Associated Dry Goods Corporation.

Q. At that meeting you have testified generally that these manufacturers declared themselves as being unable to employ designers of their own, generally speaking? A. Yes.

Q. Do you recall what answer was made to these manufacturers? A. Yes.

12214

*Milton J. Greenebaum—For Commission—Cross.*

Q. From your point of view? A. Yes.

12215

Q. Directing your attention to your remarks particularly about concessionaires and the rest of them, would you be good enough to inform the Court as to what was your answer to them when they said that they could not afford to buy? A. My answer was that I could not understand that argument in view of the fact that that is one industry in which the commission buyers are pretty active, and that these manufacturers pay commission buyers commissions of 3 per cent. to 5 per cent. for buying their merchandise, and that in my opinion it surely would not cost them that much to have their own designers and to have their own designing department, and therefore I could not take any stock on that statement on their part.

Q. In other words, it was your contention that in substituting their own designing department for making use of commission buyers, that their expenses would not increase if they substituted one for the other? A. I imagine, in fact, it would be lessened.

12216

Q. What—was that, in your opinion, and from your knowledge of the industry, a fact that there would be no increase in expense to the \$4.75 manufacturer if instead of adopting his present practices he adopted the practice of using a designing staff of his own in order to originate his models? A. In my opinion there would not be a great deal of additional expense because the manufacturers of \$4.75 merchandise work in such volume that the additional charge on an individual dress would not carry any great deal of influence in their costs.

Q. As a matter of fact, Mr. Greenebaum, are there not many \$4.75 manufacturers who are to-day employing their own designers? A. There are.

Q. Coming back to 1933 when you first learned of the Guild and had your conversations with Mr. Rentner to which you testified, what was the— A. What?

*Milton J. Greenebaum—For Commission—Cross.*

12217

Q. I withdraw the question. At that time, most, if not all of the members of the Guild, with few exceptions, were running lines from \$22.75 wholesale and up, were they not? A. Yes, sir; they were manufacturing along those lines.

Q. At that time, from your knowledge of the industry, at what retail prices generally were goods of those lines being sold? A. The most prevalent were in the \$10.75 class range—cost range—

Q. What is that? A. The most prevalent were in the \$10.75 cost range.

Q. As a matter of fact, at that time it was an isolated case, was it not, where a copy of a Guild case was being sold at retail for under \$6.75; is that not so? A. Yes.

12218

Q. Is it not a fact that in 1933 the sale of copies of Guild originals, and the wholesale price of \$3.75, or about that price, was an isolated instance of a manufacturer, and that most, if not practically all of the copies of Guild merchandise at that time were being sold at \$10.75 wholesale, and up? A. Well, there were some \$6.75 and lower, but I would say the majority were \$10.75, and it would be a very isolated case at \$3.75.

Q. And the copies of \$6.75 were not important in their bearing upon the market, so far as the market was concerned? A. They were unimportant as far as Guild manufacturers were concerned.

Q. Yes. A. Yes.

Q. Is it not a fact that in the light of what you have just testified to, it was commonly understood at the meetings to which you have testified, that at that stage of the development of the Guild program, copies of merchandise in this low-end wholesale price would not be considered copies of Guild dresses? A. May I have that question?

12219

Q. (Question read.) A. It was definitely understood that our arrangements would not include any merchan-

12220

*Milton J. Greenebaum—For Commission—Cross.*

dise at less than \$10.75 cost; that is, the run of merchandise to be returned.

Q. In a comparable sense, let us say, that a Ford cannot be considered a copy of a Rolls Royce.

Mr. Haycraft: I object.

*By Mr. Albert.*

Q. To finish my question, would you say that is comparable as of that time?

Examiner Averill: The objection is overruled. He can state whether he thinks it would be a good comparison or not.

12221

A. I do not know whether that would be so, no. In fact, I would say that it would not.

*By Mr. Albert.*

Q. This understanding was quite open? A. Yes.

Q. The meetings, themselves, were not furtive? A. No, indeed.

Q. There was nothing secret about the matter? A. Not that I know of.

Q. Those that were there knew what was going on? A. Certainly, there was nothing about the meetings that was a secret to those who were present at the meeting. It was just an open proposition as far as they were concerned, and freely discussed by all who were present.

12222

Q. Do you recall who was present? A. Yes, I believe I do.

Q. In addition to yourself and Mr. Bergdahl? A. Well, Mr. Block of Kirby, Block & Company, Mrs. Glenby, I do not think Mr. Swinney was there, although he may have been, and Mr. Weil and Mr. Gaynor of Weil, Hartman & Company, either one or both of them were there; I am not sure which one was there.

Q. I understand. A. And Mr. Gussmann of the May Company, I believe, was there, or it may have been Mr. Putzman who was there, I do not just exactly recall, but some representative from the May Company was there as remember.

Q. Your understanding of the problem is at that time the effect of the Guild was understood by all present— A. I do not quite understand.

Q. I will reframe the question: Your understanding of the problem as at that time affecting the Guild, and as it was understood by all present, was, first, that it would be applicable to all present; is that so? A. Yes. It was to apply to everybody equally.

12224

Q. Do you have it as your understanding that the problem as at that time it affected the Guild was understood, individually, by all of the persons present? A. Oh, yes, I am sure they all understood it. I hardly see how they could miss it.

Q. Was it not also the understanding at that time that although the Guild would not apply its program at that time to adjudge copies in the low-end merchandise of Guild merchandise, that no co-operating retailer would willfully, knowingly, intentionally, or deliberately, at any price, sell or encourage the sale of copies of Guild merchandise? A. I do not think that point was ever brought up at that particular meeting.

Q. Was it brought up shortly thereafter? A. No, not that I know of. May I answer that in my own way?

12225

Q. Yes. Go ahead. A. The declaration of co-operation that we received made no deviation and there were no exceptions on that declaration of co-operation. It was because of that fact that it was a simple, clear declaration of the agreement to return copies of Guild merchandise that were so adjudged that we asked for this meeting with the Guild officials, and it was because of our statement of the problem and of the opinion that, particularly in the

12226

*Milton J. Greenebaum—For Commission—Cross.*

low-priced range, the situation would be difficult, that the statement was made by Mr. Rentner, in answer to a query in regard to that price range situation, that there was no need for anybody to worry on this thing because they were not interested in any merchandise manufactured at less than \$10.75 cost. You see, the declaration of co-operation that we received made no differentiation on all the way up and down. There were no exceptions on that declaration of co-operation at all. In fact, it was because of that very fact that it was such a simple, clear and concise declaration of co-operation so far as the agreement to return copies of Guild merchandise that was so adjudged that we asked for this meeting with officials of the F.O.G.A. to discuss it. It was there, because of our statement of the problem as we saw it, and the difficulties that would exist in the low-price range, that the statement was thereupon made by Mr. Rentner that there was no need to concern ourselves about that matter at all because the Guild was not interested in any merchandise, the Guild members, manufactured at less than \$10.75 cost. That was a definite statement, and he said that we should have no hesitancy in suggesting that it be signed by our stores because they would not require the return of copies below \$10.75.

12227

Examiner Averill: Off the record.  
(There was a discussion off the record.)

12228

Examiner Averill: Back on the record.

*By Mr. Albert.*

Q. Let me ask you this, Mr. Greenebaum, and I will try to make it one single question—one single, all-inclusive question, in the hope that perhaps we can save a good deal of time. A. Yes.

Q. From your knowledge of the industry at that time—  
A. You mean back in 1933?

Q. 1933, and at that stage of the development of the Guild plan, while what you have stated as to the non-inclusion of the low-end dress copies is correct, was that not also your understanding of the essence of the Guild program, that it was a part of the normal, probable development to include the low-end price lines eventually?

A. No, I am inclined to think that we did not think that far ahead.

Q. That is, may I put it this way: That at that stage of the development of the plan, the lack of knowledge of everybody concerned of the particular problems that then confronted them, they did not even dream that at that time of this, or did not certainly even attempt at that time to consider how it might develop, and they were just interested in the particular plan before them at that time; is that a fair statement? A. I would say that that was my recollection at that time, at any rate. They were only at that time considered—in other words, in the plan as they had it before them, and the practicabilities to be considered in working out that particular plan. They did not contemplate or think about any of the other difficulties because they did not realize what might come up as the thing went along.

12230

Q. In other words, they were groping in the dark, and anything that was in the dark and they could not see, they did not worry about? A. Yes. It was a new departure, to put it that way, I should say.

Q. Exactly. A. I think that is the better way to express it.

12231

By Examiner Averill.

Q. Is it not true that there is testimony in this record showing how many manufacturers are engaged in these various fields or price ranges?

Mr. Albert: In 1933, your Honor?

Examiner Averill: Yes.

12232

*Milton J. Greenebaum—For Commission—Cross.*

Mr. Albert: Yes, sir; sketchily, and there are numerous holes in it; but they will be completely filled in before the case is through.

Examiner Averill: I want to get some idea as to how many manufacturers were engaged in the different fields. I will ask both attorneys on each side if they can get hold of anything that shows that I would like to have it in here, because I think it would be rather important.

Mr. Albert: It is in very sketchily because it had to be brought out on cross-examination, naturally, and on our direct case we will bring in the full figures.

12233

Examiner Averill: Very well, Proceed.

*By Mr. Albert.*

Q. Mr. Greenebaum, at the time of the formation of the Guild you, representing your office, and others who were present there representing their groups, were in complete sympathy with the problem of eliminating style piracy, were they not? A. Yes, so far as I know they were, and I know I was.

Q. You wanted to do everything possible to curb that evil: is that so? A. Yes, anything that could be done without injury to our own business, naturally.

12234

Q. In answer to a question by Mr. Hayercraft, that you signed your declaration of co-operation as a result of an emergency in that you believed that unless you signed the declaration of co-operation you would not be able to see Guild merchandise for your various lines, is not what you meant by that the following: That a problem had existed in the industry for some time; that you were in favor of eliminating and erradicating the evil which that problem was; that the Guild had adopted a plan which at that time seemed to be a good plan for eliminating it; that the moti-

vating cause, the initial impetus, which directed you to join the Guild at that time and to sign the declaration of co-operation was the fact that the Guild, for the first time, was taking steps to eliminate this evil and in the promulgation of its plan it stated that retailers would not be permitted to see their merchandise unless they signed their declaration of co-operation? A. May I answer that question in my own way?

Q. Certainly. A. I think that you may possibly have misunderstood my answer to Mr. Haycraft's question.

Q. That is what I want to find out. A. We did not sign the declaration of co-operation in any haste. The endeavor was that we wanted to meet with the officials as quickly as possible because a new season was coming on and we wanted to get the things straightened out that were in our mind before the season opened, and that was the reason we asked for a meeting with the Guild officials as quickly as they could get together, and that was the reason the meeting was held that was held at Miss Glenby's office.

12236

Q. And having straightened out what you believed to be your difficulties, you signed the declaration of co-operation willingly? A. The only difficulty, the primary difficulty that struck us from the standpoint of the office, as far as the offices that I represented were concerned with, anyhow, was the matter of the low-end merchandise. I recognized this difficulty and then I called the heads of several other offices, several other buying offices, on the telephone and asked them what they thought should be done about it, and it was agreed—or, at least, I observed that I got the same reaction from all of them as to their opinion of the difficulty that existed; and, furthermore, we decided to ask for a meeting with the Guild officials immediately and asked what could be done to take care of that problem. We had the meeting. When we came away from the meeting at the Mutual Buying Offices with the understanding that was reached there, we all signed these agreements

12237

12238

*Milton J. Greenebaum—For Commission—Cross.*

and sent them in immediately, because we were quite satisfied with Mr. Rentner's statement that we apparently had solved our problem.

Q. So that you signed the declaration of co-operation because you believed that the program was a good one, that the problems were all ironed out as far as you were concerned, and you signed the declaration freely? A. Yes.

Q. You did not sign it because you thought you were forced to sign it in order to see the fall lines? A. No.

Q. There was no duress in your signing it, was there?

Mr. Haycraft: I object as calling for a legal conclusion.

12239

Examiner Averill: It is a statement of fact. Overruled.

A. No, we did not feel that there was any duress.

*By Mr. Albert.*

Q. Unless you were satisfied that the program of the Guild were a good one, you would not have signed the declaration of co-operation for your accounts or for your stores that you represented; you would not just so that you could see the fall lines; is that true? A. Correct. The only reason I signed it was because I thought it was a good thing. Whether or not I could see the fall lines did not influence me one way or the other.

12240

Q. Was that belief, in your opinion, equally true of all the representatives of resident buying offices' members present at the meeting? A. I discussed this matter over the telephone before the meeting, and although I cannot identify any of the offices with whom I spoke—I do not remember that—I do not remember who they were offhand, but there were two or three of them who were all in accord with the idea of trying to curb style piracy, and the only thing that was in their minds was the same thing that was

in my mind as to how to meet with the lower-end dresses problem in these stores of ours that handled such merchandise or carried that merchandise, and when that point was brought up to Mr. Rentner and to Guild officials they answered us in the way they did, which removed the principal objection that we had, and then we had no further thought but to sign the declaration ourselves and to recommend that our stores sign it, which we did.

Q. And the question of whether you can see Guild merchandise in the fall was not the prompting or motivating or energizing motive which made you sign the declaration, was it? A. No; the point that was considered was whether it was a good proposition.

Q. Exactly. A. Yes.

Q. Now, Mr. Greenebaum, have you made any investigation at all as to the number of copies of Guild dresses that are sold by chain stores? A. I have not.

Q. No investigation of any kind whatsoever? A. No—do you mean from the standpoint of the number or percentage, or anything like that?

Q. No, any investigation that you may have had to obtain figures of any kind. A. No.

Q. You can answer that in any way that you want. A. No.

Examiner Averill: He says no.

The Witness: No.

By Mr. Albert.

Q. You have testified that in the low-end merchandise the competition of chain stores makes it unequal for your stores to send back copies of Guild merchandise; is that so? A. Yes.

Examiner Averill: In the lower brackets?

The Witness: Yes.

12244 *Milton J. Greenebaum—For Commission—Cross.*

*By Mr. Albert.*

Q. Yes? A. Yes.

Q. Assuming, for the sake of argument, the truth of that statement, is that not offset by the inability of chain stores to obtain Guild merchandise and to compete with your stores in the medium and better-priced dresses? A. No, because the chain stores do not carry better-priced merchandise.

Q. Has that occurred for the most part since the adoption of the Guild program? A. Has what occurred?

Q. Has not the chain stores' abandonment of that type of merchandise—the chain stores gradually reduced their price lines to the low-end price dresses? A. No, I do not think so.

Q. Have you any figures, or have you made any investigation of that subject, from which you can perhaps give us some figures showing that chain stores do not sell in the \$10.75 or the \$16.75 brackets and have not sold in those brackets since the adoption of the Guild program? A. Well, I know from the standpoint of seeing Guild dresses in the stores and seeing what our competition is, that the greatest percentage—I mean, the greatest competition that we have is in the \$4.75 cost.

Q. At the present time? A. Yes.

Q. Is it a fact that one of the largest chain stores, which formerly sold a great deal of merchandise in the \$10.75 price line, has since the commencement of the Guild program dropped that price line from sale? A. I really do not know.

Mr. Haycraft: We will concede that, if you wish.

*By Mr. Albert.*

Q. Is it a fact—is it a fact that Lerner's formerly sold dresses in the \$10.75 price lines and have dropped that price line? A. Yes.

Q. So that the competition of the chain stores in that price line with your stores is an advantage which your stores have gained since the adoption of the Guild program and has offset or is an offset to the competition which still remains in the low and price dresses; is that so? A. I would not call it an offset. I will concede that the elimination of the \$10.75 price range from Lerner's stocks would be an advantage to our stores in their cities.

Q. Is it not also an advantage to your stores, Mr. Greenebaum, that the Guild merchandise which is sold in your stores at the present time is not being copied and sold at lower prices instead of ~~necessitating mark-down of the Guild merchandise sold by you in your stores?~~ A. Would you mind repeating that question?

Mr. Haycraft: That is objected to as contrary to the facts in the record and the testimony of the witness. Guild merchandise has been copied and is sold by these chain stores that he has been talking about, and that is the complaint.

Mr. Albert: I will amend the question without getting into an argument about Mr. Haycraft's erroneous interpretation of it.

By Mr. Albert.

Q. Is it not also an advantage to your stores, Mr. Greenebaum, that the Guild merchandise which is sold in your stores at the present time is not being copied and sold at lower prices, necessitating mark-down of the Guild merchandise sold by you in your stores?

Mr. Haycraft: Same objection.

Mr. Albert: I will withdraw the question and ask another question and see if we can satisfy Mr. Haycraft this time.

12250

*Milton J. Greenebaum—For Commission—Cross**By Mr. Albert.*

Q. In the medium and better-priced dresses is not the advantage to your stores that copying of those dresses has been greatly eliminated, saving your stores the loss previously occasioned by the necessity of having to mark down these dresses once they are copied at cheaper prices? A. May I ask what you mean by medium and better-priced?

Q. \$10.75 and up. A. Yes.

Examiner Averill: Off the record.

(There was a discussion off the record.)

Examiner Averill: Back on the record.

12251

*By Mr. Albert.*

Q. Mr. Greenebaum, you have testified that your first knowledge of your desire to include \$10.75 dress manufacturers as members of the Guild was in the spring of 1935 or the summer of 1935? A. Yes; I think I have a memorandum on that.

Q. Yes. A. I think it was around March or April of 1935.

Q. Prior to that did you ever see any notice in the "Women's Wear"— A. Yes.

Q. Had you had any discussions whatsoever about it with anyone connected with the Guild? A. At the—you mean before the article appeared in "Women's Wear"?

12252

Q. I will ask you that: Prior to the time you saw a mention of it in "Women's Wear," had you ever talked about it with anyone connected with the Guild? A. I do not remember.

Q. Do you recall a meeting had at Gimbel's in January of 1935? A. With reference to what?

Q. I believe— A. We were meeting—I might mention the fact that we were meeting every Friday, the Association had their luncheons every Friday, so there were plenty of meetings.

*Milton J. Greenebaum—For Commission—Cross.*

12253

Q. Do you recall that there was a meeting at Gimbel's at which Mr. Post was present? A. Well—

Q. And at which he discussed, or, at least, at which the discussion arose as to the taking in of the \$10.75 manufacturers? A. I do not recall offhand. However, if I can see the minutes of the meeting I might be able to identify it; but I do not remember that offhand, that particular one.

Q. Did you attend a meeting which was addressed by Mr. Post shortly after he became associated with the Guild? A. Well—

Q. You recall that, do you not, the meeting that was held at the home offices of the Guild, the Guild offices?

A. No, the meeting that was held at Gimbel's—you mean one of the Associated Buying Office luncheons?

12254

Q. Yes. A. I probably was present.

Q. Do you recall, in the light of the facts that have been given you to refresh your knowledge, that it was the first meeting that was even addressed by Mr. Post, and that at that meeting the question of including the \$10.75 manufacturers was presented? A. I frankly do not remember having heard about the \$10.75 being included until I saw it in "Women's Wear."

Q. Would you say that, despite the fact that your association met every Friday, that the matter had not been discussed whatsoever until you saw that notice in "Women's Wear"? A. I am not speaking of the notice that announced their admission. I am speaking of a little write-up that said that they were being considered—that is, the idea—that is, the idea of including them as affiliates of the Guild was being considered.

12255

Q. About how big was that notice, would you say? A. Well, it was big enough for us to see it.

Q. Would you say it was 2 inches in size? A. No. I would say it was possibly 4 or 5 inches.

Examiner Averill: Is that notice not in evidence?

12256.

*Milton J. Greenebaum—For Commission—Cross.*

Mr. Haycraft: Yes, it is, your Honor.

Examiner Averill: Why pursue that further?

*By Mr. Albert.*

Q. I show you Respondents' Exhibit 44 and ask you whether or not you likewise saw that full-page advertisement from "Women's Wear" which appeared in 1933? A. It seems to me that I remember seeing that, yes.

Q. Did you likewise see Respondents' Exhibit 45, which I now show you? A. I think this is the one I remember seeing. Let me look at this. I do not remember that one. I do remember this one.

12257

Examiner Averill: Now, what type of record are we going to have? Which one is "that one" and which one is "this one"?

*By Mr. Albert.*

Q. The witness has indicated that he remembers seeing Respondents' Exhibit 45, but is not certain of having seen Respondents' Exhibit 44. Is that true? A. Yes.

Examiner Averill: Yes.

*By Mr. Albert.*

Q. You customarily read "Women's Wear" every day, do you not, Mr. Greenebaum? A. Yes.

12258

Q. And in the course of reading it you see these advertisements? A. Yes.

Q. What action, if any, was taken after you saw Respondents' Exhibit 45? A. I beg your pardon?

Q. What action, if any, was taken after you saw Respondents' Exhibit 45, either by you, the Associated Buying Offices or any of the gentlemen which you have testified were on the committee with the Guild and interested in Guild activities? A. We had no association at the time to take these matters up, in 1933.

Q. What action, if any, did you take when you saw it?

A. None.

Q. None? A. None.

Q. Did you discuss it with anybody? A. No.

Q. Did you discuss it with Mr. Post? A. No.

Q. Did you discuss it with Mr. Bergdahl? A. I do not remember discussing it with anyone.

Q. No one at all? A. No one at all.

Q. Just read the newspaper and laid the newspaper aside and forgot it; is that correct? A. That is correct.

Q. That is true? A. That is the way I remember it.

Q. But you do remember seeing it? A. I think I saw it.

Q. Now, Mr. Greenebaum, you testified that a certain understanding was entered into in regard to the return of—in certain circumstances—of 3 per cent. copies and in other circumstances of 5 per cent. of the copies of Guild dresses? A. Yes.

12260

Q. At any time did any of your stores approach that figure in the return of their copies? A. Well—

Q. They never had that many, did they? A. I really do not know.

Q. Have you any idea of the figures at all? A. No.

Q. It is not your testimony, is it, that this understanding was changed by reason of the fact that more than 3 per cent. or more than 5 per cent. of copies were prevalent in co-operating stores—is it? A. I do not know why it was changed.

Q. Now, you have testified, Mr. Greenebaum, that you were in accord with the fair trade practices which were shown to you as being Guild suggestions by Mr. Haycraft? A. Not in all of them.

12261

Q. Substantially you had no particular disagreement with them one way or the other; most of them were good; is that so? A. Most of them were accepted and acceptable.

Q. You have also testified that your main objection to

12262

*Milton J. Greenebaum—For Commission—Cross.*

these trade practices, fair trade practices, despite the fact that you would be in favor of them; was that you would not be consulted with respect to them; is that so? A. No.

Q. What is the fact? A. It was that we should be called upon to lend our wholehearted support to an organization which, after all, were considered to be solely for the purpose of eliminating style piracy, and then for them to adopt fair trade practices without consulting us, which we naturally were bound to uphold in upholding the Guild program.

12263

Q. But the fair trade practices that were suggested were fair trade practices which, had the thought occurred to you, you would have asked to be set up; is that so, generally speaking? A. I could not answer that "yes" or "no." I might like some of them and not like others, but at least I felt that it should not have been brought in as part of the Guild program that we were supporting.

Q. Now, Mr. Greenebaum—and I am not trying—and I sincerely tell you this—I am not trying to get you to concede that each and every one of the fair trade practices that have been shown to you is a good practice—that have been shown to you as the Guild practices are, in your opinion, things that you would want to have 100 per cent; but I am merely asking you only as to the general cross-section; if, in your opinion, generally speaking—there may be individual things that you object to personally—those fair trade practices are just for the industry? Is that so?

12264

Mr. Haycraft: I object.

Examiner Averill: Overruled.

Mr. Haycraft: Exception.

Examiner Averill: Noted.

A. I would say in a general way, yes.

*Milton J. Greenebaum—For Com.—Cross—Redirect.*

12265

*By Mr. Albert.*

Q. Reserving to yourself the right to object to particular ones, I am talking about the Guild program in general so far as fair trade practices are concerned. A. Yes.

Q. It is your testimony, is it not, on direct testimony, that, although you had no objection to the rules promulgated, you objected to not having been consulted in the promulgation of those rules; is that so? A. As participating people in the agreement. I am not speaking about any consulting for myself. I am talking about the retailers in general.

Q. Now, as a matter of fact, Mr. Greenebaum, are you not aware that most of these fair trade practices had been suggested or were incorporated in the Guild plan from its formation? A. I am not aware of that, no. 12266

Q. Is it not— A. I have been informed of that since. I know it now, but I did not know it then.

Q. Would you not say that perhaps that lack of knowledge—the lack of attention to these fair trade practices, has been because the most important matter before the Guild was elimination of style piracy? A. Well, I would say it was, because these other fair trade practice provisions that were a part of the Guild program were never commented upon to us or to anyone else in particular, because the thing that was most uppermost in everybody else's mind was the matter of style piracy elimination.

Q. The style piracy elimination was, so to speak, in the public's eye? A. Yes, that is correct. 12267

*Redirect examination by Mr. Haycraft.*

Q. Mr. Greenebaum, was your objection to the fair trade practice rules based upon the fact—or, was your objection to the fair trade practice rules based upon the fact that the retailers were subject to being red carded for a breach of the rules that had been adopted by the Fashion Orig-

12268

*Milton J. Greenebaum—For Commission—Redirect.*

nators Guild after the retailers had signed the declaration of co-operation, without any consultation on the part of the Guild with the retailers with respect to those fair trade practices? A. May I ask that the question be read? It was rather long and it was just a little involved for me.

(Question read.)

Mr. Albert: In the first place, I do not understand the question at all.

Examiner Averill: If you can answer it, you are at perfect liberty to do so.

12269

A. Well, I think that a great many of these fair trade practices refer primarily to the manufacturers and their dealings with the retailers. But the objection that we had to that was that, as I see it, the Guild program—

Mr. Albert: If your Honor please, I object to the witness answering anything except the question that was put. He has demonstrated the fallacy in the question as put by Mr. Haycraft, and in answering the question he has shown that it is impossible for a retailer to be red carded for a violation of the fair trade practice rules because there is no such in this industry that applies to them. Everything after that is immaterial and irrelevant. I was waiting to see if the witness would fall into the error that Mr. Haycraft's question was made upon, and so he has.

12270

Examiner Averill: I do not understand his answer to be exactly as you put it. Read it again.

(The answer was read.)

Examiner Averill: No, I do not. You may continue your answer.

A. As I see it, the Guild program was dependent to a great extent, if not all—in other words, if not to the entire

extent—upon the co-operation that they received from the retail stores. Therefore, if we were asked to co-operate and we signed a declaration of co-operation as far as this policy was concerned, it was our feeling that instead of the way they did it, inasmuch as we were supporting the Guild program and that it was through our support that the Guild program was in existence, that we should be consulted about any fair trade practice, if any should be passed, that affected the dealings with manufacturers; and that was one of the primary reasons that we objected to the inclusion of these fair trade practice provisions in the Guild program which we were supporting. I do not think—

12272

Examiner Averill: No, no. I think you have completed an answer to it.

Mr. Albert: Now that the witness has finished, in your Honor's opinion, I ask that it be stricken as not responsive.

Examiner Averill: The motion is denied. He has told us all about what it covered before. It is the same thing that he told us before. It is simply a repetition there, but I do not think I will grant any motion to strike it. Proceed.

*By Mr. Haycraft,*

Q. I will ask the witness whether he knows whether or not—I will ask you whether or not you know of any retail dealers that have been red carded because of violating the fair trade practice rules? A. I can answer that.

12273

Q. Do so. A. One of our stores was threatened about being red carded within the last three weeks because of an unfair return.

Q. Because of an unfair return? A. Yes, sir.

Q. What were the circumstances? A. The circumstances were that the garment was returned, said to be not like

12274

*Milton J. Greenebaum—For Commission—Redirect.*

sample, and it was maintained by the manufacturer that the garment was in fact like the sample, and the retailer in turn, out in Wyoming, decided not to accept the package for return from the manufacturer. I received a telegram—first I received a telephone call from Mr. Golby of the Guild telling me that he wanted to notify me, before red carding the store, that if the store did not handle this properly, that the store would be red carded. I wrote the store and they accepted the return and that was that.

*By Examiner Averill.*

12275

Q. What do you mean, the store accepted the return from the manufacturer? I thought it was just the other way. A. The store returned the garment to the manufacturer, who refused to accept it because he claimed it was an unfair return.

*By Mr. Haycraft.*

Q. Who, the manufacturer? A. Yes, sir.

*By Examiner Averill.*

12276

Q. Has that been adjudged as being a copy? A. That has nothing to do with copies, your Honor. This was an unfair return, alleged unfair return. The retailer said the garment was not up to sample, and the Guild house and the committee who passed on it said that it was an unfair return because the garment was in fact like sample, so the manufacturer returned it to the retailer and the retailer refused to accept it at first, and then later, upon advice from me as well as advices through me, accepted it.

Q. What was the name of the manufacturer and the name of the retailer involved in that transaction? A. The name of the manufacturer was Del Monte Hickey and the retailer was Kassiss Dry Goods Company, in Cheyenne, Wyoming.

*Milton J. Greenebaum—For Commission—Redirect.*

12277

Q. Was it after Mr. Golby said that the store would be red carded if they did not make the right kind of a settlement that you told your client to take the return? A. Well, our buyer examined the merchandise and she reported to me, among others, that the garment was like sample and that the manufacturer was in the right, and we wrote the store to that effect and the garment was accepted.

*By Mr. Haycraft.*

Q. Is that the only instance that you know of where this rule with respect to unfair returns has been invoked on the part of your group? A. That is the only instance in our organization. 12278

Examiner Averill: Off the record.

(There was a discussion off the record.)

Examiner Averill: Proceed.

*By Mr. Haycraft.*

Q. With respect to your opinion, Mr. Greenebaum, as to the ability of the \$4.75 manufacturers to employ designers— A. Yes.

Q.—what is your understanding of the amount of money that is necessary to employ a designer by a manufacturer? A. Well, that varies. I mean, I am not in a position to say exactly. It is not, of course, only the designer's salary. There are other costs that enter into it. As a matter of fact, my observations to the \$4.75 manufacturers were not based upon any knowledge of their costs, but was based upon my own personal opinion. 12279

Q. In your opinion do the \$4.75 manufacturers sell as many originals that their designers originate as they do of copies? A. When you say "originals," do you mean original designs, original designed styles, or adaptations?

12280

*Milton J. Greenebaum—For Commission—Redirect.*

Q. Well, they are usually adapted, we will say, ~~the~~ that are so adapted that they meet no opposition from the Guild. A. Well, I would say it is probably fifty-fifty.

Q. In your opinion, would the \$4.75 manufacturers maintain a volume of business if they restricted their manufacturing to adaptations which were not frowned upon by the Guild? A. Possibly not. Although those who are designing their own styles seem to be doing all right.

Q. But you do not know anything about the volume of business they do or the amount of profits they make? A. No.

12281

Q. In 1933 was there any copying done by the \$3.75 and the \$6.75 manufacturers, or, rather, by the \$3.75 manufacturers of the \$6.75 manufacturers? A. I assume there was copying by the \$3.75 manufacturers of the styles gotten out by the \$6.75 manufacturers, yes.

Q. Do you have any recollection of it? A. Well, I do not remember exactly, but I would say that there was copying done, without a doubt. Possibly, very probably that is so. It is very probable that the \$6.75 manufacturers were copying some of the Guild merchandise and the \$3.75 manufacturers were copying the \$6.75 manufacturers' products. It goes down that way.

Q. And it was because of that fact that your clients—that is, the retailers that you represent—feared that they would be required to return garments that were purchased from those manufacturers? A. Yes.

12282

Q. Now, if your clients, the retail dealers, had been kept out of the showrooms of the Guild manufacturers in June, 1933, or July, 1933, would it have any effect on their business at all? In other words, would it have affected their business any?

Mr. Albert: I object, if your Honor please, as speculation.

Examiner Averill: It is speculation, merely speculation, but let him answer it.

Mr. Albert: Exception.

Examiner Averill: Noted.

A. In my opinion it would have seriously affected their better business.

By Mr. Haycraft.

Q. You did everything you could to see that they got in there and you were doing that, were you not? A. Yes.

Q. At that time you did everything you could to see that they could get in there? A. I certainly did.

Q. With respect to the mark-down, give us the definition of what that term means. That word was used in a question propounded to you on cross-examination. What do you mean by the term "mark-down"? A. Mark-down is any price that a garment is sold for that is less than the price at which the garment was bought to sell for. 12284

Q. If a retailer had a garment which had a ticket \$22.50 at the end of the season, he sold it for \$17.50 in order to move it, would that be a mark-down? A. Yes, sir.

Q. In fact, if he sold it at any time during the time that he had that dress on hand for less than what he had intended to sell it for, would that be a mark-down? A. For anything less than what would have been the fair mark-up on the cost price. Of what the fair mark-up would have been on the cost price, yes.

Q. As a matter of fact, are not the mark-ups much higher in the higher brackets than in the lower ones? 12285

The Witness: Do you want me to answer that, your Honor?

Examiner Averill: Certainly.

A. Yes, because the risk is greater.

Q. As I understand it, it was—see if I am correct, and correct me if I am wrong—is it the fear of mark-downs

12286

*Milton J. Greenebaum—For Commission—Redirect.*

on the part of retail dealers that prompted them to co-operate with the Guild in their program in the beginning?

Mr. Albert: I object to that because it assumes a situation contrary to the testimony already in evidence. He testified that he wanted to be ethical. I am correcting you for an erroneous statement which I am sure you do not want to make.

Examiner Averill: I think I will overrule the objection and let the witness answer that, if he can.

The Witness: What is the question?

(The question was read.)

12287 A. I would not say the fear of mark-down alone.

*By Mr. Haycraft.*

Q. I will put it this way: Was it the hope of the retail dealers that because of their co-operating with the Guild in their campaign for the purposes, as they expressed them, that they might lessen their mark-down, that caused them to co-operate with the Guild in that program? A. Lessened mark-down, increased profits and prolonging the life of the higher-priced garments.

*By Examiner Averill.*

12288

Q. In other words, where there is an extensive copying of any popular design it means that those who have bought that design earlier in the season will, in all probability, have to reduce their price at which they sell it? A. Possibly, if they have not already sold it.

Q. Of course, if they have already sold it, that disposes of it and it is no longer a problem? A. Yes, sir.

Q. But if they still have it on hand, they will have to reduce the price below what they consider to be a fair return in order to move it at all? A. Yes, sir.

*By Mr. Haycraft.*

Q. Is it your testimony that, as the result of the Guild's activities, your clients, in your opinion, have sustained fewer mark-downs or lesser percentage of mark-downs than they were sustaining prior to the Guild?

Mr. Albert: I will concede it, Mr. Haycraft.

Mr. Haycraft: I want to get the witness' testimony in that regard.

A. I would rather have that question asked of a retailer or, at least, answered by a retailer.

Q. I understood you to say that on your cross-examination. A. To my knowledge, yes, but, for the specific, actual figures or percentages, I would rather have some of the retailers elaborate on that.

12290

Q. Is it a fact that consumers benefit by mark-downs?

A. Consumers benefit by mark-downs?

Q. Consumers buy at a cheaper price.

Mr. Albert: In other words, if you steal from the public, is it better?

Mr. Haycraft: I object to that as an improper interpretation of the question.

Examiner Averill: Disregard that, gentlemen. Answer the question.

A. Well, the fact that they are getting a better product for less than they ordinarily have to pay would be a benefit to their pocketbook.

12291

Mr. Haycraft: Nothing further.

*Recross examination by Mr. Albert.*

Q. And a loss to the lady who had paid the full price by the unwonted reduction in the value of her garment?

A. Yes.

12292

*Milton J. Greenebaum—For Commission—Recross.  
David Rosenthal—For Commission—Direct.*

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(Whereupon, at 4.30 o'clock P. M., December 10, 1936, the hearing in the above-entitled matter was adjourned.)

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Room 901, 45 Broadway,  
New York, N. Y.,  
December 11, 1936.

Met, pursuant to adjournment, 10 A. M.

Before: EDWARD M. AVERILL, *Examiner.*

12293

(Same Appearances.)

PROCEEDINGS.

Examiner Averill: Gentlemen, the hearing will come to order to take further testimony in the case of the Federal Trade Commission v. the Fashion Originators Guild of America, Inc., et al., Docket No. 2769. You may proceed when you are ready, Mr. Haycraft.

Mr. Haycraft: I will call Mr. David Rosenthal.

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DAVID ROSENTHAL was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

12294

*Direct examination by Mr. Haycraft.*

Q. What is your name? A. David Rosenthal.

Examiner Averill: How do you spell that?

The Witness: R-o-s-e-n-t-h-a-l.

Examiner Averill: And your first name is David?

The Witness: Yes, sir.

By Mr. Haycraft.

Q. Where do you live, Mr. Rosenthal? A. 211 Central Park West.

Q. New York? A. Yes, sir.

Q. What is your occupation? A. Dress manufacturer.

Q. Where do you have your place of business? A. 1400 Broadway.

Q. What is the name of the firm? A. Rosenthal & Kalman Company, Inc.

Q. What position do you hold in that firm? A. President.

Q. Is it a corporation? A. Yes, sir.

Mr. Albert: Would you mind speaking a little louder, Mr. Rosenthal?

12296

The Witness: I will.

By Mr. Haycraft.

Q. How long has it been engaged in its present business?

A. Five years.

Q. At the same location? A. At the same location.

Q. What does it manufacture? A. It manufactures dresses.

Q. Ladies'? A. No.

Q. Misses' and junior? A. Yes.

Q. Has that been true throughout the five-year period?

A. Yes, that has been true.

Q. At what price do you sell your dresses? A. \$7.75 wholesale; some at \$10.75 and some at \$4.75.

12297

Q. Has that price range been all its price ranges for its merchandise during the past five years, or have they been changed during that time? A. We started as a \$6.75 manufacturer.

Q. Started in 1931 or during or about that time? A. What?

Q. In 1931, at or about that time? A. In 1932.

12298

*David Rosenthal—For Commission—Direct.*

Q. 1932? A. Yes.

Q. And \$6.75 manufacturers? A. Yes.

Q. How long did you continue as a \$6.75 manufacturer?

A. We continued until the N.R.A., in 1933.

Q. Then what did you do? A. We raised our price to \$7.75.

Q. Why was it you started your \$10.75?

Examiner Averill: One moment, Mr. Haycraft.

*By Examiner Averill.*

12299

Q. When you say you raised your price, you mean you raised your price line? You do not mean you necessarily raised the price of the dresses you have been selling from \$6.75 to \$10.75, but you raised your price line; is that correct? A. Due to an adjustment of labor, due to the N.R.A., we were unable to make the same type of dresses at \$6.75, so we had to raise our price to \$7.75.

Q. I want to get this clear. A. Yes, sir.

Examiner Averill: Just let me ask this to get this clear, Mr. Haycraft, please.

Mr. Haycraft: I think it will be made clear in just a moment when I ask the witness my next question.

12300

Examiner Averill: Here we have been talking about price lines which indicated a superior quality and superior article as the price went up. Now, apparently, we are going to talk about a raise in the price of a garment.

Mr. Haycraft: I am not talking about that so much.

Examiner Averill: I think that ought to be cleared up, because it is going to make a terrible confusion in the record if it is not cleared up.

Mr. Haycraft: I think I will make it clear in my next question. I have not gotten to it as yet.

By Mr. Haycraft.

Q. When did you put in your \$10.75 line? A. We put it in there every year on January 1 and we just run it for about two months.

Q. When did you put in your \$4.75 line? A. \$4.75?

Q. Yes. A. About March 1 or April 1 we just add that additional line of \$4.75.

Q. That is for the summer trade? A. Yes.

Q. It is? A. Yes.

Q. For the summer goods? A. Yes.

Q. Cottons? A. Cottons or little dresses of that type.

Q. What is the nature of the \$10.75 as compared with the \$7.75? A. Why, I would call that a coat and dress combination which we make.

Q. What type of dress is that? A. That is a redingcote which we make.

Q. A dress and a coat? A. Yes. We call it a redingcote.

Q. You originally started out with \$6.75, which you increased to \$7.75 at the beginning of the N.R.A.? A. Yes. Labor costs went up, so we had to increase the price.

Q. When the N.R.A. quit did you reduce it again? A. No.

Q. You continued it at the same price? A. Yes. We found we could get that price for it right along, so we just kept the price up.

Q. During this period of time did you employ designers? A. Oh, yes.

Q. You did? A. Oh, yes.

Q. Did you employ designers for all three lines of manufacture that you had? A. Oh, yes.

Q. How many designers do you have?

Mr. Albert: May it please the Court, I believe that that—oh, no, I will withdraw the objection.

Examiner Averill: You do not object?

12304

*David Rosenthal—For Commission—Direct.*

Mr. Albert: No, sir. Just go ahead.

Mr. Haycraft: No objection?

Mr. Albert: No.

*By Mr. Haycraft.*

Q. How many designers do you have? A. Two.

Q. Two? A. Two.

Q. How much of a staff do they have? A. About twelve.

Q. Can you testify briefly as to the functions or the duties of these designers and what they are expected to do and what they do as a matter of fact under your instructions? A. Well, they naturally are supposed to supply

12305. styles of salable dresses that we can sell.

Q. Do they go to Europe? A. Yes.

Q. They do go to Europe? A. They do.

Q. How often and when? A. Well, there is one just come back last month. That is the second trip this year.

Q. Do you know what they do when they go over there?

A. Well, they go into the various couturiers and they buy dresses.

Q. Do they bring back sample dresses? A. Oh, yes.

Q. Do you make copies of those dresses, or adaptations of them? A. We either make copies or we make adaptations.

Q. Both? A. Both.

12306

*By Mr. Albert.*

Q. Will you distinguish between the two, or are you distinguishing between the two, Mr. Rosenthal, perhaps I should say? A. No, we are making both.

Q. You are making both? A. Yes.

Q. Are you using "both" as one meaning, or are you using both words interchangeably, or is there any distinction between them?

Mr. Haycraft: I would like to conduct this examination, if you please. You may cross-examine on these matters, of course.

Mr. Albert: Surely. Will you bring that out, please?

Mr. Haycraft: I shall be happy to do so.

*By Mr. Haycraft.*

Q. Is there any distinguishment between a copy and an adaptation? A. Naturally.

Q. There is? A. There is.

Q. What is it? A. A copy is an exact duplication. An adaptation is taking the various parts of a garment which are taken from the original garments and making up another garment from them. 12308

Q. Is it customary for your designers to make adaptations of domestic as well as foreign garments? A. I would imagine so, yes.

Q. Did your firm ever belong to the Fashion Originators Guild of America, Inc.? A. Yes.

Q. When did you join it? A. Some time in October, 1934.

Q. Is that 1934 or 1935? A. '35, rather; 1935.

Q. Did you know of the Guild before that? A. Yes.

Q. How did you first learn of it? A. Through the "Women's Wear."

Q. Through the "Women's Wear"? A. Yes.

Q. Had you ever been solicited by officials of the Guild to join the Guild— A. No. 12309

Q. —before you joined? A. No.

Q. What were the circumstances under which you did join the Guild? A. Well, Mr. Keller of the Topaz called me one day and asked me whether I cared to attend—whether I would like to attend a meeting for the purposes of forming a popular-priced group as an affiliate of the Fashion Originators Guild of America.

12310

*David Rosenthal—For Commission—Direct.*

Q. Who is Mr. Topaz? A. I do not know whether he is an officer—

Mr. Albert? No, you mean Mr. Keller.

The Witness: Keller of Topaz. I do not know whether he is an officer or partner, but I know he is connected with Topaz.

*By Mr. Haycraft.*

Q. What price garments does Topaz Frocks, Inc., make?

A. \$10.75.

Q. \$10.75? A. Yes.

12311

Q. Did you attend such a meeting? A. Yes.

Q. Where was it held? A. At the Hotel New Yorker.

Q. Who else attended this meeting besides yourself? A. I believe there were twenty others.

Q. Do you recall who some of them were? A. Oh, yes, I do.

Q. When was it held? A. Some time in October, I believe.

Q. What year? A. 1935.

Q. Whom do you recall were there? A. Mr. I. Irving Cohen of H. & I. Cohen & Goshin.

Q. Yes? A. Mr. Lou Cohen of Gorgeous Frocks.

Q. Yes? A. Mr. Levine of Branson-Levine, Inc.

Q. Yes? A. Mr. George W. Cohen of the same name.

12312

Q. Yes? A. Naturally, Mr. Keller was there, of Topaz Frocks, Inc.

Q. Of course. A. I believe Mr. Swift of Abbate & Swift, Inc.

Q. Yes? A. The balance I cannot name. I remember them, but I just cannot remember them just now.

Q. Was there anyone there from Argosy Dresses, Inc.? A. Yes.

Q. Was anybody there from Beacon Frocks, Inc.? A. Yes.

*David Rosenthal—For Commission—Direct.*

12313

Q. Was anybody there from Bretter & Sussman? A.

I believe Mr. Sussman was there.

Q. Was anybody there from Campus Modes, Inc.? A.

Yes.

Q. Was anybody there from Century Frocks, Inc.? A.

Yes.

Q. Was anybody there from the G. W. Cohen Corporation? A. Yes.

Q. Was anybody there from Delhart Dresses, Inc? A.

Yes.

Q. Was anybody there from Elvira Dress Company, Inc.? A. Yes.

Q. Was anybody there from M. & S. Extract? A. Yes.

12314

Q. Was anybody there from Garland Dress, Inc.? A.

Yes, sir.

Q. Was anybody there from Gladdy Tru Size Dress Corporation? A. Yes, sir.

Q. Was anybody there from Gracie Dress Company, Inc.? A. Yes.

Q. Was anybody there from George Hess Company, Inc.? A. Yes, sir.

Q. Was anybody there from Mike Kaplan Dresses? A. I do not know whether it is a corporation. I think it is just him, but he was there, or represented.

Q. Was anybody there from Moe Kurland, Inc.? A. Yes, sir.

Q. Was anybody there from Lipman Brothers? A. Yes, sir.

12315

Q. Was anybody there from Letty Lynn Frocks, Inc.? A. Yes, sir.

Q. Was anybody there from Miss Plaza Dress, Inc.? A. Yes, sir.

Q. Was anybody there from Nite Club Frocks, Inc.? A. I do not remember.

Q. Was there anybody there from the Patricia Dress Corporation? A. Yes, sir.

12316

*David Rosenthal—For Commission—Direct.*

Q. Was there anybody there from Rexley Frocks, Inc.?

A. Yes, sir.

Q. Was there anybody there from Rosenthal & Kalman, Inc.? A. Yes, sir; I was there representing them.

Q. Was anybody there from Sandora Frocks, Inc.? A. Yes, sir.

Q. Was anybody there from Tiljane Costume Corporation? A. I do not recall.

Q. Varsity Dress Company, was anybody there for them? A. I do not remember.

Q. Was anybody there from Wein Frocks, Inc.? A. Yes.

Q. Was anybody there from Zabin-Mayer, Inc.? A. I do not recall.

12317

Q. Was there anyone else besides representatives of these firms present at that meeting on this occasion? A. Yes.

Q. Who else? A. Mr. Bergdahl, I believe, was there.

Q. Bergdahl of who? A. A.M.C.

Q. Who else? A. Well, I think there was Mr. Eisenfeld of Folmer & Adelman.

Q. What price line? A. They are a buying office.

Q. By the way, these manufacturers that I have called your attention to, are they all popular-priced group manufacturers? A. Yes.

Q. They are? A. That is what they make.

Q. By that I mean \$6.75? A. Yes.

Q. \$7.75 and \$8.75? A. Yes.

12318

Q. Was Mr. Greenebaum of Felix Lilienthal there? A. I believe he was there.

Q. Was there any other buying office represented? A. Not that I recall. There may have been.

*By Examiner Averill.*

Q. How about John B. Swinney of the Specialty Stores Association? A. He was not there at that meeting.

*Mr. Haycraft.*

Q. Was any representative of the Fashion Originators Guild of America present? A. I think there was.

Q. Do you remember who it was? A. Yes; Mr. Golby.

Examiner Averill: Mr. Golby?

The Witness: Yes, sir.

*Mr. Haycraft.*

Q. What did take place at this meeting? A. Well, we were—

Q. Who presided, first? A. Well, Mr. Keller presided.

Q. All right. Did he speak? A. Mr. Keller spoke first, and then Mr. Bergdahl spoke and Mr. Eisenfeld spoke and then Mr. Greenebaum spoke. 12320

Q. Anyone else that you recall? A. I do not recall.

Q. Did Mr. Golby say anything? A. Whatever questions put to him were answered by Mr. Golby.

Q. Now, at this meeting, first, what did Mr. Keller have to say? A. Well, he explained the purposes of the meeting, that we were to get together as a group and join as an affiliated body of the Fashion Originators Guild of America, Inc., telling us the purposes of the—

Q. What purposes did he state? A. To prevent the copying of dresses; to prevent the purchase of these same dresses by various stores that were signed up with the guild.

Q. That is, to prevent the purchase of the copies? A. 12321

*Examiner Averill.*

Q. Of the copies, not the originals? A. That is correct, sir.

12322

*David Rosenthal—For Commission—Direct.**By Mr. Haycraft.*

Q. The purposes of the Guild were explained? A. I mean by purchases made from these various buying offices from the stores unless they were O.K. It was to prevent them being purchased from these various buying offices or from the store owners or from the store buyers, to prevent them also from copying each other's dresses.

12323

Q. Did he say how that could be done? A. Well, by the registration of the various styles with the F.O.G.A. so that there would be no question as to who designed the dress first. As it usually happened, many dresses—many times the various manufacturers chose the same dress, identically the same, and, naturally, one claimed the other was a copy of each other's, so that they were to prove which one of the several had copied the dress first, and there would be a regular form of the F.O.G.A. as to its registration data, and in that way they would be able to tell, because the date would show who registered the dress first.

12324

Q. What else was said by Mr. Keller with respect to the question as to whether—or, first, with respect to the manner in which the copying could be prevented? We will take that first. A. Well, they would not sell anybody unless they were signed up with the Fashion Originators Guild of America, the F.O.G.A., as far as the purchase was concerned; that anybody that bought copy dresses would not be sold by us, and nobody that did not affiliate themselves or signed the pledge of co-operation would be red carded and our merchandise would not be shown to them in the showroom or sold to them at any time.

Q. What did Mr. Bergdahl have to say? A. Well, he gave us a sales talk. He told us what an advantage it would be for us to join the Guild. He said that it would not be but a very short time until the chain stores would have to fall in line and sign these co-operative pledges

or they would not be able to procure desirable merchandise at that particular price; and that if we would honestly go into this proposition and be honest with it, why, we would have the ability to and we would then force whoever had not signed the Guild pledge to fall in line and thereby prevent the piracy of our garments by low-end manufacturers, compelling them to go into the designing of their own merchandise.

Q. Was that about all that Mr. Bergdahl had to say?  
A. He said that it would be to an advantage; that he would help us in whatever way he could; that he would see that whatever co-operation we required would be given to us.

Q. What did Mr. Greenebaum have to say? A. He spoke along the same lines.

Q. At that time was your organization selling any dresses to— A. What?

Q. I will withdraw that. To what class of trade was your firm selling dresses in 1935 at the time this meeting was held? A. What class of trade?

Q. Yes. A. You mean the type of store?

Q. Yes. A. We sold only the fine department stores and better specialty shops.

Q. Any chain stores? A. Well, there is an entire difference of opinion as to chain stores. Would you call an outfit of seven or eight stores a chain store?

Q. Yes, I would say that was so. A. Well, if that is so, I would say we have several of them on the books.

Q. At what price usually were the dresses that you sold at \$7.75 retailed for by the retail customer, your customer?  
A. \$12.95.

Q. That is the usual price? A. Yes.

Q. What did the chain store get for them? A. \$12.95.

Q. In the summer months it would appear that you made 4.75 garments. A. For them.

12328

*David Rosenthal—For Commission—Direct.*

Q. And what price was the \$4.75 garments usually retailed by the retail shops you sold to? A. \$7.95 and some \$6.95.

Q. During the winter months, when you refer to the two-piece dress that you sold at \$10.75, at what price retail, or at what price would the retail store usually sell them for? A. \$16.75 to \$19.75.

Q. Was there any action taken at this meeting with respect to joint action to the joining as an affiliate by the individuals there? A. Yes, there were. I do not know how many pledges signed, or applications for membership.

12329

Q. Did you sign up at that time? A. I signed an application, I believe, that night.

Q. What prompted you to do so?. What was the motivating reason for filling it out, for your signing up with the Guild? A. Well, I wanted to see that the style piracy was stifled as far as it possibly could be done.

Q. You had never been invited to join the Guild before that, I take it, as you said? A. No.

Q. Did the statements made by Mr. Bergdahl and Mr. Greenebaum have anything to do with the making up of your mind on that occasion?

Mr. Albert: I object to that as entirely incompetent and immaterial and irrelevant, as to what caused him to make up his mind. The fact that he made up his mind is the essential thing.

12330

Examiner Averill: Oh, no. I think that this witness is entitled to testify as to what influenced him in his opinion, if anything did.

A. Naturally, we were always under the impression that—though we had nothing definite as far as proof was concerned, but we were always under the impression that the Guild guaranteed the various retailers a protection against piracy from \$10.75 and up, because before they

took in the \$10.75 manufacturers that was the prevailing price at that time, and we knew that. Well, we did not know, but we had some idea that there was some sort of an arrangement made as far as dresses in our price line, which is the so-called popular-price line, is concerned—that it would be somewhat the same arrangement. Then, when we saw buyers of the type of Mr. Bergdahl—I mean, representing offices that they represented, and Mr. Greenebaum, and the various others, and we thought then that we had the co-operation of the so-called larger purchasers or users of popular-priced merchandise, and so they would, in effect, more or less naturally police it for us, besides what the Guild was attempting to do. We felt assured, and I know I did and I believe the rest of them did, from what they told me, that the industry would be stabilized and this style piracy would be cut out and we could live in peace.

12332

Q. In other words, they represented offices—the larger buying offices represented a large number of retailers that bought popular-priced merchandise in the price line that you had to sell? A. Yes, and the lower-priced dresses, besides ours.

*By Examiner Averill.*

Q. But the meeting was primarily a meeting of manufacturers of popular-priced dresses, was it not? A. Yes.

Q. Of course, these other gentlemen were present, but it was really a meeting of popular-priced manufacturers?

A. Yes, sir.

12333

*By Mr. Haycraft.*

Q. While the retail dealers represented by Mr. Greenebaum, Mr. Eisenfeld and Mr. Bergdahl, they were there upon invitation of your group? A. Yes, sir.

12334

*David Rosenthal—For Commission—Direct.*

(The document referred to, heretofore marked for identification Commission's Exhibit 956, sheets 1, 2, 3, 4, 5, 6 and 7, was marked as an exhibit and received in evidence.)

*By Mr. Haycraft.*

Q. Do you recall whether or not you attended any meetings of the Guild—I refer to the Affiliated Division of the Guild—in 1935? A. Yes.

Q. Do you recall when the first meeting was that you attended? A. I recall it?

12335 Q. Yes, the first meeting of the Guild for your division of the Protective Affiliates; when was that that you attended it? A. Well, it was about a week after we joined, I believe.

Q. About a week after you joined? A. Yes, sir.

Q. Would the date October 25, 1935, refresh your recollection with respect thereto? A. It was at or about that date. I could not fix it with exactitude.

Q. October 28, I should say. A. It was thereabouts, in that period of time, I should say, Mr. Haycraft.

Q. I now show you Commission's Exhibit 958 for Identification and ask you if you can identify that in any way? A. Yes, sir.

12336 Q. Where did you get it? A. This was part of the literature supplied to us by the Fashion Originators Guild of America, the F.O.G.A. Affiliate Division.

Q. At or about the date you joined? A. This is the type of letter that we should send forward to all retailers that had not signed the declaration of co-operation.

Mr. Haycraft: If your Honor please, this is already in evidence as Commission's Exhibit 398-C and I am not offering this particular document in evidence, but I want to connect it up directly with that.

Examiner Averill: Gentlemen, the paper heretofore marked Commission's Exhibit 958 for Identification, the same being a letter sent to all retailers not signed with the Guild, and it appearing that this letter—paper, is a duplicate of a paper now in evidence as Commission's Exhibit 398-C, the same has been withdrawn.

*By Mr. Haycraft.*

Q. I show you Commission's Exhibits 959 and 960 for Identification and ask you if you can identify both of those papers or either one of them? A. I believe I can.

Q. What is Commission's Exhibit 959 for Identification, Mr. Rosenthal? A. This is a letter addressed to the various Protective Affiliates of our group. 12338

Q. Dated when? A. November 7.

Q. What year? A. 1935.

Q. Who sent it? A. The Fashion Originators Guild of America, and it is signed "J. M. Golby."

Q. What is Commission's Exhibit 960 for Identification, Mr. Rosenthal? A. The type of letter, the sample or form letter, which manufacturers might send to retailers who have not signed the declaration of co-operation.

Q. Was Commission's Exhibit No. 960 for Identification sent to you along with this letter of November 7, 1935, being Commission's Exhibit 959 for Identification? A. Yes, sir.

Q. It was? A. It was. 12339

Mr. Haycraft: Those two exhibits, namely, Commission's Exhibits 959 and 960 for Identification, are both offered in evidence at this time. However, I want to ask the witness one more question about it.

12340

*David Rosenthal—For Commission—Direct.**By Mr. Haycraft.*

Q. I will ask you whether or not Commission's Exhibit 960, at the time you received it, was physically attached to Commission's Exhibit No. 959 and the two were together attached when you received them? A. Yes, sir. That is the way I received it. They were stapled together with a wire staple.

Mr. Albert: You are offering both of these?

Mr. Haycraft: I am.

Mr. Albert: No objection.

Mr. Haycraft: I first offer Commission's Exhibit 959 for identification.

12341

Examiner Averill: Gentlemen, the paper heretofore marked Commission's Exhibit 959 for identification will be received in evidence and marked Commission's Exhibit 959; the same appearing to be a letter dated November 7, 1935, addressed to the Protective Affiliates in the \$6.75, \$7.75 and \$8.75 price range, and being from the Fashion Originators Guild of America, J. M. Golby, Executive Secretary.

(The paper heretofore marked for identification Commission's Exhibit 959 was marked as an exhibit and received in evidence.)

(The paper heretofore marked for identification Commission's Exhibit 960 was marked as an exhibit and received in evidence.)

12342

(The paper heretofore marked for identification Commission's Exhibit 961 was marked as an exhibit and received in evidence.)

(The paper heretofore marked for identification Commission's Exhibit 962 was marked as an exhibit and received in evidence.)

*David Rosenthal—For Commission—Direct.*

12343

Mr. Albert: I object to the admission in evidence of Commission's Exhibit 962 on the ground it is already in evidence as Commission's Exhibit No. 37.

Mr. Haycraft: That objection comes too late. He has already ruled on that.

Examiner Averill: The objection is overruled; but the paper has already been received in evidence.

*By Mr. Haycraft,*

Q. I show you Commission's Exhibit No. 961, Mr. Rosenthal, for identification, and I call your attention to the first paragraph in that letter, which reads as follows: "As a member of the Fashion Originators Guild of America, Inc., you have pledged yourself to sell only to those stores which have indicated that they will protect your merchandise by signing the 'Declaration of Co-operation' with the Guild." I also call your attention to the second paragraph of that letter, which reads as follows: "In order to facilitate your determination with respect to which stores are co-operating with the Guild, we have provided you with an index card system. The names of certain retail stores are listed on red cards and, as you undoubtedly know, these accounts cannot be sold." Did you receive the index card system referred to in this language that I have just quoted to you? A. Yes, sir.

12344

Q. Do you still have them in your possession—that is, this card index system? A. What?

Q. Do you still have this card index system in your possession? A. Oh, yes.

12345

Q. Will you produce it at this proceeding, at your convenience? A. Yes. In fact, I have them here, I think.

Q. You have them here? A. Yes. I think I sent them to Room 502 and they should be there now. I sent them about two hours ago by our porter and they should be there now.

12346

*David Rosenthal—For Commission—Direct.*

Q. Now, Mr. Rosenthal, beginning on, say, November 26, 1935—November 1, 1935—or I will say November 26, 1935—or I will put it at just before December 1, 1935, did your organization co-operate with the Guild by having confined your sales of garments to retail dealers in the file indexes submitted to you by the Guild in accordance with the statements contained in Commission's Exhibit 961? A. Yes.

Q. Did you receive from the Guild reports of instances where shoppers had reported that copies of garments registered by your organization with the Guild were being sold by certain retailers? A. Yes, sir.

12347

Q. That is what is known as piracy reports? A. Right.

Mr. Haycraft: I ask to have these documents marked for identification.

(Documents were thereupon marked for identification Commission's Exhibits 964, 965, 966, 967, 968, 969, 970 and 971.)

(The letter heretofore marked for identification Commission's Exhibit 970 was marked as an exhibit and received in evidence.)

Examiner Averill: Gentlemen, you may proceed.

*By Mr. Haycraft.*

12348

Q. Showing you Commission's Exhibit 964, this statement appears therein: "In view of the fact that Mr. Kalman, of Rosenthal & Kalman, made a private agreement with Mr. Weisen, of Feinberg Weisen, concerning the copy of your style No. 415, we cannot give you any protection on this style." What was the protection referred to? A. Well, to ask the stores that had to or were pledged to co-operate with the Fashion Originators Guild of America to return garments which were considered copies of this particular style.

Q. All right. What do you know about the private agreement with Mr. Weisen and your firm referred to in that paragraph? A. At the time we found out about the copy of this particular dress by Feinberg & Weisen, I went down to see Mr. Weisen and Mr. Feinberg and told them that I had several thousand dresses in work for this particular style and that would they please hold up delivery of their dresses until I could get my dresses into the hands of the retailers, or at least out of the factory, so that we could distribute them to the various customers that had orders with this style with us. He agreed to do that and said he would hold them up a week so that it would give me sufficient time to get all of our dresses in to them and we could make these deliveries to the various customers to whom we had sold the merchandise to.

12350

Q. Can you fix the date that you had that conversation with Mr. Weisen? A. It was about February 7—no, it was about January 17, rather.

Q. January 17? A. About January 17.

Q. Do you have any way of fixing that date in your mind? A. Yes. I was just leaving for the South at that time and it was that same morning that I went down to see them about it.

Q. This sketch No. 175 is the sketch of style 415, manufactured by Rosenthal & Kalman; is that correct? A. Yes, sir.

Q. I am referring to Commission's Exhibit 965. A. Yes.

Q. Style No. 415, Commission's Exhibit 965, who made that? A. Our designer.

12351

Q. When did you return from Florida? A. February 8, 1936.

Mr. Haycraft: I ask to have these two documents marked—there are four of them—marked for identification.

12352

*David Rosenthal—For Commission—Direct.*

(Documents were thereupon marked for identification Commission's Exhibits 972, 973, 974, 975 and 976.)

(The paper heretofore marked for identification Commission's Exhibit 976 was marked as an exhibit and received in evidence.).

*By Mr. Haycraft.*

12353

Q. I call your attention, Mr. Rosenthal, to Commission's Exhibit 973, being a telegram from Fashion Originators Guild, Albert M. Post, to Rosenthal & Kalman, Inc., under date of February 17, 1936, and reading as follows: "Imperative that you attend to-night's meeting at Waldorf, 8.30." I will ask you whether or not you attended that meeting? A. Yes, sir, I did.

Q. What was the meeting for? A. It was a general meeting called by the Board of Governors of the Fashion Originators Guild of America and their affiliates to take up the matter of red carding a certain number of stores upon which the Board of Governors refused to take it upon themselves to do alone, but wanted to have the membership themselves decide upon this procedure.

Q. Do you have a recollection as to how many were in attendance at that meeting? A. How many members?

Q. Yes. A. Well, maybe, I guess, about 150 or 175, or maybe more. It was quite a large gathering.

12354

Q. Have you any independent recollection of approximately how many of the Protective Affiliates group that you belonged to were present? A. I think there were about five or six; the others had resigned previously to this.

Q. They had resigned previously? A. Yes, sir.

Q. Do you have any recollection of who was present at this meeting? A. Who were the members of which?

Q. The Protective Affiliates in the price ranges \$6.75, \$7.75 and \$8.75. A. May I see that?

Q. You may refresh your recollection from that. A. Well, Abbate & Swift, Inc. Bretter & Sussman, Inc.

Q. Yes? A. Branson-Levine, Inc.

Q. Yes? A. George Hess Company, Inc. I was there—Rosenthal & Kalman, Inc.

Q. Yes? A. Zabin-Mayer, Inc. There may have been one or two others that I do not recall.

Q. Now, do you have a recollection of what transpired at this meeting? A. The membership was asked to read a certain number or a certain group of stores that belonged to the Retail Research.

Mr. Albert: You are among friends. You can say it is the Associated Merchandising Corporation. 12356

The Witness: The A.M.C. And also I believe at that time Lord & Taylor was among them and several of the Associated Dry Goods stores. There was quite a bit of controversy going on there in the "Women's Wear," where I got my information from, and there was quite a series of letters going backwards and forwards between the Fashion Originators Guild of America and the various department stores that were in this controversy, and I believe it had all led up to a showdown as to whether the Fashion Originators Guild of America was going to proceed in the manner in which they desired or whether the stores were going to defy the Fashion Originators Guild of America as far as the copying was concerned. 12357

Mr. Albert: By "stores" you mean the American Merchandising Corporation, you mean, Mr. Rosenthal?

The Witness: And other stores that were in the controversy—whether they were going to defy the Fashion Originators Guild of America, Inc., and disclaim the so-called pledge of co-operation which they had previously signed.

12358

*David Rosenthal—For Commission—Direct.**By Mr. Haycraft.*

Q. What was the controversy? A. The controversy was not aired on the floor, if I recall, except that they wanted these various stores sign this new declaration of co-operation.

Q. By that do you refer to Commission's Exhibit 976? A. I believe that is what it was.

12359

Q. Was any statement made at that meeting as to why they wanted these stores to sign this new declaration of co-operation? A. No. The Board of Governors, as I recall, asked the membership to pass their entire confidence on—or to base their entire confidence in, I should say, in what the Board of Governors were doing, because they felt that they could not very well bring this out into the open as to what was the cause behind this particular step that they wanted to take.

Q. Do you recall whether or not certain resolutions of the Board of Governors were read at that meeting? A. Yes, they were.

12360

Q. Referring to Commission's Exhibit 38, minutes of a general membership meeting of the Fashion Originators Guild and its Protective Affiliate members, held at the Waldorf-Astoria Hotel, Monday, February 17, 1936, at 8.30 P. M., I call your attention to the following resolution—or, rather, I call your attention to the following: "Upon a motion by Mr. Kane, seconded by Mr. Kahn (of Somay, Inc.), the following resolution already passed by the Board of Governors was unanimously ratified (Mr. Maidman of Fashionwear not voting): Resolved that each of the resident buying offices be requested to sign a new 'Declaration of Co-operation' in form satisfactory to the chairman and counsel of the Fashion Originators Guild, and in the event of failure by any of the said offices to sign such a 'Declaration of Co-operation' within a week from the date of mailing to them, such failure shall be deemed a refusal to co-

operate and our members shall be notified accordingly. Upon a motion by Mr. Garfinkel, seconded by Mr. Herzog"—no, that refers to the succeeding one. Just refer to the one ending with the words, "and our members shall be notified accordingly." I will ask you whether you voted on that resolution? A. No.

Q. Do you know whether anyone else refrained from voting on it? A. No.

Q. Did you make any remarks or statement at the meeting with respect to that resolution? A. No.

Q. You did not? A. No.

Q. I call your attention to the following item in the same minutes: "Upon a motion by Mr. Gans, seconded by Mr. Herzog, the following resolution already passed by the Board of Governors, was unanimously passed by the membership: Resolved that upon the receipt of a 'red card' each member of the Guild or any Protective Affiliate who at the time of such 'red card' has on order any merchandise from such 'red carded' account, shall within twenty-four hours submit to the Guild a statement setting forth the style numbers and the quantity of each style on order, regular or special and the dates of such orders. Violation of this resolution shall be deemed a violation of the rules with regard to 'red cards' and shall be subject to the same disciplinary action." Did you vote on that resolution? A. Does that specify in that resolution who the accounts were?

12362

Q. Not yet. A. No, I did not.

12363

Q. Did you make any remarks with respect to that resolution? A. I did. Yes, sir; I did.

Q. What did you say with respect to it? A. I said that I did not think it was fair to take an attitude at this time; that it was going to prove of serious harm to me and to my firm if we had to live up to that agreement as I had a terrific amount of business booked and that I was practically the only one left in the \$7 field with the members

12364

*David Rosenthal—For Commission—Direct.*

of the Fashion Originators Guild of America and thought I did not care to be a martyr to the cause as far as the Fashion Originators Guild was concerned. Also, several of the other members they thought I should be given quite a little bit of consideration, but it seemed that this was a sort of a steam rolling meeting where any objection that anybody raised was immediately shouted down and hollered down, and you could not expect to get anything of anybody in there because they were very angry about something that apparently none of the members knew except the board of governors; and that there were certain things that they had got in there that was going to be done at any cost, so there was no further necessity of further going into the discussion of this particular amendment that was being put through there that night.

12365

Q. Referring again to Commission's Exhibit 38, and continuing the list of names that I was reading from, down to and including the name "Strawbridge & Clothier, Philadelphia, Pa.," I call your attention to that list of names and that is the list of names I was reading from when the Examiner interrupted me, and I will ask you whether or not you voted on that resolution. A. Whether I voted on the resolution?

Q. Yes, whether you voted on the resolution. A. Yes. I voted on it.

Q. And which way did you vote, aye or no? A. No.

12366

Q. Do you know whether or anybody else did? A. Wait just a moment. Just what was this motion that you had reference to?

Q. The motion about the red carding of these stores. A. Oh, I voted against that resolution.

Q. Do you know whether or not anyone else present voted against that motion? A. I do not recall.

Mr. Albert: That is objected to. In the first place, it is entirely immaterial one way or the other.

Examiner Averill: No, I think he is attempting now to contradict the statement set forth in the exhibit to the effect that it was a unanimous vote.

Mr. Albert: It may have been a secret vote.

The Witness: No, it was not unanimous.

Mr. Post: It says very clearly that it was not unanimous.

Mr. Haycraft: That is another matter.

Examiner Averill: I understood counsel to say that it was said that it was not unanimous?

Mr. Haycraft: The resolution does not read that way. The resolution says specifically, "Upon a motion made by Mr. Fox, seconded by Mr. Mal-  
las, and unanimously carried," and I certainly think that means "unanimous."

12368

Examiner Averill: The objection is overruled, gentlemen; the witness may answer the question.

Mr. Albert: Exception.

Examiner Averill: Noted.

*By Mr. Haycraft:*

Q. Yes. Answer the question. A. I voted against that motion.

Q. Did anyone else vote against it? A. I do not know. I do not recall.

Q. You saw the vote taken? A. I did.

Q. How was the vote taken? A. It was by acclamation.

Q. Was it aye and no? A. No, raising your hand.

Q. Raising your hand? A. Yes, sir.

12369

Q. Was a "no" vote put so you could raise your hand with respect to voting against it; will you say? Were you given an opportunity of voting against it? A. Yes, sir; sure.

Q. And you voted against it? A. Yes, sure.

Q. You do not recall now whether anyone else voted against it or not?

12370

*David Rosenthal—For Commission—Direct.*

Mr. Albert: In order to ease Mr. Haycraft's mind, we will stipulate that the vote was 185 to 17; it was passed that way on the first vote.

Mr. Haycraft: Very well, I will be glad to have that statement.

Mr. Albert: Would you also like to be informed, Mr. Haycraft, that a motion was made to make it unanimous and that that was carried?

Mr. Haycraft: Very well. I will ask this witness about that.

*By Mr. Haycraft.*

12371

Q. I will ask you as to whether there was such a motion—in other words, I will ask you whether on the further vote you voted in favor of that motion? A. No. I did not. I did not vote either way.

Q. On the last one? A. At the time of the acclamation, in other words, at the time they decided to make that motion unanimous.

Q. You did not vote on that at all? A. No, I refrained from voting.

Q. I also call your attention to the following motion which is set forth in the minutes of that meeting: "Mr. Lasher made the following motion, seconded by Mr. Altmark: That, in respect to those stores 'red earded,' the members should fill all orders on hand that were received prior to the issuance of the red card." Did you vote on that motion? A. Was that after the other motion?

12372

Q. Yes. A. No, I decided not to take any further part in the particular motions as they proceeded after that.

Q. Did you have anything to say with respect to the motion that I referred to when it came up? A. Yes, I did.

Q. The one with reference to the red carding of the list of stores, that is the one I have reference to. A. Oh, yes, I did. That is the one I understood you referred to rather than the last one.

Q. Yes. What did you say about that? A. I took the floor and told the board of governors and the membership that I did not believe that that thing should be done as it would be a very serious thing as far as I was concerned, that at the time I joined the Fashion Originators Guild of America there were twenty or twenty-five or maybe at least seventeen of us that were joined together, and that during that time I was away quite a few of them dropped out from the Fashion Originators Guild of America. My partner signed this new declaration, or this new proposal of membership while I was away. And when I came back I found out, I did not know until that particular night that I attended the meeting that there were just a few left of the original group that joined the Fashion Originators Guild of America as an affiliated organization, or an affiliate organization as far as the \$6.75, \$7.75 and \$8.75 group were concerned. I took the floor that night and said that I did not want to be a martyr to the cause; that I was perfectly willing to go along in any particular program in my own particular price line and would go along, but there would be no necessity for me to continue because I would be the only loser in this entire program or transaction; that any account that was red-carded could very easily obtain merchandise from any competitor of mine that was under no such obligation, and I said I would not be a party to it. Well, of course, there were some of the members there that defended my action, Mr. Lasher of Mary Lee Frocks said there was lots of justification of what I contended and there were several others, but I do not know their names now, who made the same statement, but there were several who spoke against it and said they were also in the same situation. Of course, they were under the impression that they were competitors of mine, when in reality they were not because they were making higher-priced dresses than I was by a dollar, anyway.

12374

12375

12376

*David Rosenthal—For Commission—Direct.*

But, anyway, it was put to a vote and naturally the results you know from the meeting itself through the minutes.

Q. Did you attend any more meetings of the Guild after that? A. No, I did not.

Q. You spoke in your last answer about a new agreement which was signed by your partner while you were away. A. Yes, sir.

Q. Can you identify that from any of these papers which I now hand you? A. Yes, sir; this is it.

12377

Mr. Haycraft: I ask to have this blank form of declaration of co-operation marked Commission's Exhibit 977 for Identification.

(The paper was marked for identification Commission's Exhibit 977.)

*By Mr. Haycraft.*

Q. I show you Commission's Exhibit 977 for Identification and ask you if this is the agreement that you referred to in your answer a moment ago as the new agreement with the Guild signed by your partner while you were away? A. That is right.

Q. Will you say that that was signed about January 28, 1936? A. This one here?

12378

Q. Yes. A. No, I do not know when it was signed, but it was during my absence, anyway.

(The paper heretofore marked for identification Commission's Exhibit 977, sheets 1 and 2, were marked as an exhibit and received in evidence.)

*By Mr. Haycraft.*

Q. I think we should have something in the record there in connection with Mr. Kalman's associate, because he has been referred to as your "partner," whereas I understand this is a corporation. A. It is a corporation.

*David Rosenthal—For Commission—Direct.*

12379

Q. What is Mr. Kalman's position with the organization? A. He is treasurer.

Q. I ask that because I understood you to use the word "partner" and the organization is a corporation. A. That is right. My error. He is treasurer.

Mr. Haycraft: I now offer in evidence Commission's Exhibit for Identification, 978.

Mr. Albert: No objection.

Examiner Averill: The paper which has just heretofore been marked Commission's Exhibit 978, which bears date February 20, 1936, being a telegram from the Fashion Originators Guild to Rosenthal & Kalman, Inc., under date of February 28, 1936, will be received in evidence and marked Commission's Exhibit 978. 12380

(The telegram heretofore marked for identification Commission's Exhibit 978, was marked as an exhibit and received in evidence.)

*By Mr. Haycraft.*

Q. Calling your attention to Commission's Exhibit 978, a telegram which says in part: "Grievance committee has been appointed to hear charges involving violations of membership rules of Fashion Originators Guild as well as special contract signed by your firm on January 28." What were the charges therein referred to?

12381

Mr. Albert: I am going to object to any more of this reading into the record of a telegram which is already in evidence and it is simply cluttering up the record because it is obviously only necessary for counsel to refer to it. This is simply running up a huge record which there is no necessity for running up.

12382

*David Rosenthal—For Commission—Direct.*

Mr. Haycraft: There is more record being taken up by the objection than there is by reading the short excerpt from what I wanted out of that telegram in evidence.

Mr. Albert: If you must make it necessary for me to object I must, but otherwise it would not be done.

Mr. Haycraft: I did not do it. If you want to make an objection of that sort I cannot stop you from it.

Examiner Averill: Gentlemen, I do not see why you do not just show the telegram to him.

12383

Mr. Haycraft: I cannot, Mr. Examiner. I simply want to call his attention to a certain part of the telegram. I do not want to ask him about all of it.

Examiner Averill: Proceed.

*By Mr. Haycraft.*

Q. When you refer to that language in there—

Mr. Haycraft: As you see, Your Honor, before I continue with that question I am simply referring to that particular language in this telegram. I do not want to ask him about the whole business but just part of it.

12384

Examiner Averill: Go ahead. We will see what it is about.

*By Mr. Haycraft.*

Q. I will repeat that in order to make the question clear, if you do not remember it. A. I do not remember what you referred to now.

Q. Calling your attention again to Commission's Exhibit 978, a telegram which under date of February 28, 1936, says: "Grievance committee has been appointed to hear

charges involving violations of membership rules of Fashion Originators Guild as well as special contract signed by your firm on January 28." What were the charges that were referred to in this language that I have just quoted to you, if you know; first, do you know? A. Yes.

Q. What were they? A. That had reference to allowing them to examine my books.

Q. What were the circumstances? A. Well, they had sent an examiner and I had refused to permit him to examine the books.

Q. Who was it that they sent up there? A. Who sent him up?

Q. Who came and then who sent him? A. Some young man. I do not know who he was.

Q. Who sent him? A. The Fashion Originators Guild of America through some of their officers.

Q. What did he want? A. He wanted to go over our books to see if we were shipping any of the accounts that were red carded by the Fashion Originators Guild of America in the last meeting that we spoke about.

Q. That you testified to this afternoon? A. Yes, sir.

(The telegram heretofore marked for identification Commission's Exhibit 979 was marked as an exhibit and received in evidence.)

(The letter heretofore marked for identification Commission's Exhibit 980, sheets 1 and 2, was marked as an exhibit and received in evidence.)

(Whereupon, at 4 o'clock P. M., December 11, 1936, the hearing in the above-entitled matter was adjourned.)

12388

*David Rosenthal—For Commission—Direct.*

Room 901, 45 Broadway,  
New York, N. Y.,  
December 14, 1936.

Met, pursuant to adjournment, 10 A. M.

Before: EDWARD M. AVERILL, *Examiner.*

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PROCEEDINGS.

Examiner Averill: You may proceed.

12389

Mr. Haycraft: I ask that these documents be marked for identification.

(Documents were thereupon marked for identification Commission's Exhibits 981, 982, 983, 984, 985, 986, 987, and 988.)

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DAVID ROSENTHAL resumed the stand and testified further as follows:

*Direct examination (continued) by Mr. Haycraft.*

12390

(The documents heretofore marked for identification Commission's Exhibits 981, 982, 983, 984, 985, 986, 987, and 988, were marked as exhibits and received in evidence.)

(Documents were thereupon marked for identification Commission's Exhibits 989, 990, 991, 992, 993, and 994.)

*By Mr. Haycraft.*

Q. I show you Commission's Exhibits 989 to 994, both inclusive, and ask you if you can identify those papers that

you received from the Guild and as having been taken from your files? A. Yes, sir.

(The documents heretofore marked for identification Commission's Exhibits 989, 990, 991, 992, 993, and 994, were marked as exhibits and received in evidence.)

*By Mr. Haycraft.*

Q. Mr. Rosenthal, I call your attention to Commission's Exhibit 993, a pink card reading as follows: "Do not attempt show the Dayton Company or B. Forman Company any goods for substitution, nor substitute numbers on these orders of your own accord." I will ask you if you would say that that referred to the showing of garments in your showroom? A. Yes.

12392

Q. Now I call your attention to Commission's Exhibit 994, and I will ask you whether or not you received similar letters with respect to— A. What?

Q. I will ask you this way: Calling your attention to Commission's Exhibit 994, I call your attention to the first paragraph which reads as follows: "This is to advise you that we have been specifically requested by the B. Forman Company, Rochester, N. Y., to ship all merchandise which they had bought prior to their withdrawal of their 'Declaration of Cooperation' and the subsequent red carding." The second paragraph of that letter reads as follows: "We request you to immediately ship to them any merchandise which they had previously bought and which is now available for delivery." I will ask you whether or not you received letters containing language similar to that except that the company making the request was that of the Dayton Company, Dayton, Ohio, and the Boston Store, Minneapolis, Minn.—no, this is the Dayton Company, Dayton, Ohio; the Boston Store of Minneapolis, Minn., and the

12393

12394

*David Rosenthal—For Commission—Direct.*

Boston Store, Milwaukee, Wis., on the same date as that?  
 A. That is correct for the Dayton Company and the Boston Stores.

12395

Q. In this same letter it says: "Please do not confuse the purpose of this notice. It applies only to that merchandise ordered prior to February 17th and does not authorize you to accept any new orders, to exhibit your line or to ship any additional goods. Further, we wish to caution you that extreme care must be exercised to prevent any substitutions. Kindly notify this office at once of any merchandise shipped so that it can be checked off against the records which you have previously given us." I will ask you whether or not the reference to "red carding" means Exhibit No. 993; that is to say, whether or not the red card, Commission's Exhibit 993, refers to that same subject matter? A. Commission's Exhibit 993, this little pink card, refers to the same subject matter that you read to me from that letter.

Mr. Haycraft: I ask to have the following documents marked for identification Commission's Exhibits 995 to and including 998.

(The documents were marked for identification Commission's Exhibits 995, 996, 997, and 998.)

*By Mr. Haycraft.*

12396

Q. I now show you Commission's Exhibits 995 to 998, both inclusive, and ask you whether or not these are papers coming from your records and received from the Fashion Originators Guild of America, Inc.? A. Yes.

(The documents heretofore marked for identification Commission's Exhibits 995, 996, 997, and 998, were marked as exhibits and received in evidence.)

*By Mr. Haycraft.*

Q. I will ask you, Mr. Rosenthal, whether the pledge referred to in Commission's Exhibits 995, 996, and 997 is the pledge that is already in evidence as Commission's Exhibit 250?

Mr. Albert: As to that—

Examiner Averill: Off the record.

(There was a discussion off the record.)

Mr. Albert: If your Honor please, instead of having this witness read both of them, if we can look at them it will only take a moment to see if they are the same.

Mr. Keller: The only difference is the date. One says January 15 and the other says February 1. 12398

Mr. Albert: All right, then, they are the same.

Mr. Haycraft: What about it? Will you stipulate it?

Mr. Albert: Yes. If you will just have my last statement read you will see it is to that effect.

Mr. Haycraft: Let it be read.

(Mr. Albert's comment was read.)

Mr. Haycraft: All right. That is what I want.

*By Mr. Haycraft.*

Q. Calling your attention to Commission's Exhibit 998, I will ask you whether or not the pledge referred to in that is the same as the one in Commission's Exhibit 250? 12399

Mr. Albert: You mean the pledge mentioned as having been included in Commission's Exhibit 998?

Mr. Haycraft: Yes.

Mr. Albert: We will stipulate that it is the same.

*Cross-examination by Mr. Albert:*

Q. Mr. Rosenthal, you testified that at a meeting of the members of your individual manufacturers' association,

12400

*David Rosenthal--For Commission--Cross.*

that approximately at the beginning of 1935 Mr. Bergdahl was present and told you the advantages of your being in the Guild, and that he believed in a very short time chain stores would likewise be co-operating retailers. At that time did he express any opinions as to the reasons why he thought the chain stores would sign up as co-operating retailers, or would soon be co-operating retailers? A. I am sorry. I do not catch that question.

12401

Q. I say, you testified, Mr. Rosenthal, that at a meeting of the members of your individual manufacturers' association, approximately, I should say, in the beginning of 1935, but the time you will recall, Mr. Bergdahl was present and told you the advantages of your being in the Guild and that he believed that in a very short time chain stores would likewise be co-operating retailers, and I want to ask you did he at that time express any opinions as to the reasons why he thought the chain stores would soon be co-operating retailers? A. No.

Q. What was the substance of his statement at that time? Did he merely assure you that if you gentlemen joined up the chain stores would very soon be co-operators, or just what was it? A. He said, he just said that it was proving successful, but that in order to prove entirely successful it would be necessary for everybody concerned in the manufacture of dresses to be able to employ their own designers, and through that medium they would be able to eliminate the style piracy.

12402

Q. Then, would you say that it was his statement at that meeting of the members there, that the lower-priced manufacturers join the Guild then that would necessitate the chain stores becoming co-operative retailers, and because of that necessity, that, of necessity, the chain stores would, in fact, become co-operating retailers? A. Well, I do not recall that there was anything said about chain stores, Mr. Albert.

Q. You did testify that Mr. Bergdahl said that in a very short time the chain stores would be co-operating? Do you not recall that? A. No, I do not.

Q. Is it the fact that he did so speak to you? A. I cannot positively say.

Q. Do you employ separate designers in your \$4.75 group of dresses? A. Yes.

Q. As distinguished from your other price lines? A. No. You see we do not make \$4.75 dresses except in about two months of the year. Those same designers take care of it.

Q. Turning, then, to the \$4.75 field, do they design their dresses? A. Well, we do not make a regular line. We might make up ten dresses and that would be sufficient for us for these two months.

12404

Q. You signed the original declaration of co-operation for your firm, did you not, Mr. Rosenthal? A. I believe I did.

Q. The latter one was signed by Mr. Kalman, was it not? A. That is right.

Q. You have given some testimony of the differences that arose between you and the Guild at certain times? A. Yes.

Q. Would you mind telling us more about that, please? A. We never had any differences.

Q. Are you a member of the Guild at the present time? A. I do not know.

Q. Shall I say that a disagreement arose between you and the Guild, if you do not want to admit that there is a difference, and ask you to tell us what that disagreement was? A. Well, at the time of the February 17 meeting, when they passed this resolution, I felt that I did not want to become a martyr, and that it would be very detrimental to my own business.

12405

Q. You mean by that that you had so much business with the Associated Merchandising Corporation, or A.M.C., that you could not afford not to sell them? A. The A.M.C.?

12406

*David Rosenthal—For Commission—Cross.*

Q. The A.M.C. A. Not necessarily, no, I did not agree with that. The A.M.C. are one of my smallest customers, and that was not the reason why we had this lack of accord.

Q. Just what do you mean by that? A. You see, at that meeting besides the A.M.C. being brought into this question, the Associated Dry Goods Association were brought in. Then there was talk of the Mandel Brothers, and then there was some talk of Marshall Field's. Now—

Q. You sell those stores much goods, or do you? A. Oh, yes, I do, I should say that I sell that particular group probably half a million dollars worth of business a year.

12407

Q. With that group? A. Yes.

Q. Yes. A. And it did not make any difference how I felt about it privately; I felt that since I was the only one in my particular field, or price group, that was going to be penalized, that I did not care to become a party to that type of an agreement.

Q. What do you mean by the only one in your particular field? A. There was no competitive concern in the affiliated left.

Q. In February, 1936, you mean? A. That is right.

Q. Well, after the decision was made, did you continue to sell to these red carded stores? A. Yes, sir.

Q. To whom did you sell? A. To whoever wanted to come in.

12408

Q. Did you sell Lord & Taylor? A. Lord & Taylor were not red carded.

Q. Did you sell Abraham & Straus? A. Yes.

Q. Have you any idea of how much you sold? A. No, I have not.

Mr. Haycraft: That is objected to.

Examiner Averill: Objection overruled.

Mr. Haycraft: Exception.

By Mr. Albert.

Q. Did you sell Bloomingdale's? A. Yes, sir.

Q. Have you any idea of how much you sold them? A. No.

Q. Did you sell Wm. Filene's Sons & Company? A. Yes.

Q. Have you any idea how much you sold them? A. No.

Q. Did you sell Lord & Taylor? A. Yes.

Q. Have you any idea how much you sold them? A. No.

Q. Did you sell John Shillito Company? A. Yes.

Q. Have you any idea how much goods you sold them?

A. No.

Q. Did you sell Strawbridge & Clothier, Philadelphia?

A. Yes, sir.

Q. Have you any idea how much you sold them? A. No.

Q. Did you sell the Reich-Cumler Company? A. Yes,

sir.

Q. Have you any idea how much you sold them? A. No.

Q. Have you sold any other red carded stores besides those whom I have mentioned?

Mr. Haycraft: I object.

Examiner Averill: What is the basis of that?

Mr. Albert: They sold whomever they felt it was to their interest to sell, according to the testimony of Mr. Rosenthal, so I am asking him as to what particular concerns he sold to.

Mr. Haycraft: That is objected to.

Examiner Averill: Objection overruled. He can state to whom he has sold.

A. I would have to go into the records and find out who they red carded first, and then find out whether we sold any of those houses.

12412

*David Rosenthal—For Commission—Cross.**By Mr. Albert.*

Q. Do you not know? A. No.

Q. Do you not have the slightest idea? A. No, I do not.

Q. Did you sell R. H. White? A. Yes.

Q. Do you know how much you sold to them? A. No.

Q. Did you sell The Emporium, San Francisco, Calif.?

A. Yes.

Q. Do you know how much you sold them? A. No.

Q. Did you sell A. C. Capewell? A. H. C., yes.

Q. Do you know how much you sold them? A. No.

Q. Did you sell Ernest Kern? A. Do we or did we?

Q. What did you think I was asking you about?

12413

Examiner Averill: Oh, tell him what you were talking about and we will get along faster.

*By Mr. Albert.*

Q. Did you after February 16— A. Yes.

Q. —sell to Ernest Kern? A. Yes.

Q. Did you also sell to Schuster Company? A. Schuster?

Q. Milwaukee. A. Yes.

Q. Do you know how much you sold them? A. Yes.

Q. Did you sell J. L. Hudson Company in Detroit? A.

Yes.

Q. Do you know how much you sold them? A. I do not have any idea.

12414

Q. Did you sell William Taylor? A. Yes.

Q. Have you any idea how much you sold them? A. Not at all.

Q. Did you sell The Dayton Company? A. Yes.

Q. Do you know how much you sold them? A. I have no idea.

Q. Did you sell B. Forman &amp; Company? A. Yes.

Q. When did you sell them? A. We have never stopped.

Q. You never stopped during all of this period? A. No.

Q. Have you any idea how much you sold them? A. No.

Q. Well, now, did you ever resign from the Guild, Mr. Rosenthal? A. I do not know.

Q. Have you since February, 1936, Mr. Rosenthal, paid to the Guild the dues that you were supposed to pay? A. No.

Q. I show you a photostatic copy of a declaration of co-operation purporting to bear your signature, Mr. Rosenthal, and I will now ask you if this is a photostatic copy of the declaration of co-operation—

Mr. Haycraft: That is not a declaration.

Mr. Albert: No, it is not.

By Mr. Albert.

12416

Q. —of the agreement between you and the Guild—

Mr. Albert: Thank you, Mr. Haycraft.

A. Yes.

Mr. Albert: I ask that this be marked Respondents' next exhibit, for identification.

(A document was marked for identification Respondents' Exhibit 97.)

Mr. Albert: I offer Respondents' Exhibit 97 in evidence, if your Honor please.

Mr. Haycraft: No objection.

12417

Q. Mr. Rosenthal, did the shipment of orders to the various stores to which I referred and about which I have interrogated you, and do they now appear in your books?

A. Do the shipments?

Q. Yes. A. The various orders?

Q. That is right.

Mr. Haycraft: That is objected to as irrelevant and immaterial.

12418

*David Rosenthal—For Commission—Cross.*

Examiner Averill: Off the record.

(There was a discussion off the record.)

Examiner Averill: Objection sustained.

Mr. Albert: Exception.

*By Mr. Albert.*

Q. As a matter of fact, have no other names been substituted in your books for the names of these various stores to whom you shipped goods after February 16?

Examiner Averill: Is there an objection to that question?

12419

Mr. Haycraft: I do object to that question.

Examiner Averill: Sustained. Exception noted for Counsel.

Q. Do your books show, Mr. Rosenthal, that you shipped goods to Wm. Filene's Sons & Company after February 16, 1936? A. That is correct, your Honor; I did ship them all the time.

Mr. Haycraft: Both before and after.

Examiner Averill: If he has said that about that particular firm it would seem that would close the investigation.

The Witness: That is what I said, your Honor.

12420

Examiner Averill: Please, Mr. Rosenthal, I have to listen to Counsel on this matter.

Mr. Albert: I object to the witness interjecting himself to the matter in this way, your Honor, and I desire to have it noted on the record that he is showing an undue effort in the matter.

Examiner Averill: Perhaps we all show more or less effort at times.

Mr. Haycraft: His testimony is the same as to all of them.

Examiner Averill: Objection sustained.

Mr. Albert: Exception.

Examiner Averill: Noted.

By Mr. Albert.

Q. Do you recall when the auditor for the Fashion Originators Guild of America, Inc., came up to your firm to look at the books; you recall that, do you not? A. Yes.

Q. When he first came in he was given the books, was he not? A. Yes.

Q. And he was permitted to examine them, was he not? A. Yes, by our bookkeeper.

Q. Do you recall that after having examined the books of the firm, by the bookkeeper, he requested the express receipts on these orders? A. No. 12422

Q. Do you recall that he was given these express receipts? A. Well, the auditor was only here in our place of business for a half an hour. I was out at the time that the order came in, and he came in and asked the bookkeeper could he examine our books and she did not know any different, she said, "Yes."

Q. Did he examine your books at all? A. When do you mean?

Q. Did he examine your books before that time? A. He never did.

Q. This was the first time? A. Yes.

Q. Then what happened? A. I came in and I saw a strange man there examining our books and I said "Who is that man?" She told me. I said, "Shut out your books." There was no request made for anything up to that time, and then he requested me if he could see them, and I then said to him, "I am sorry. We cannot allow you to examine any books here." 12423

Q. Do you not recall, Mr. Rosenthal, that the books were given to the auditor to look at; that you were in the inner office at the time; that he examined the books; that

12424

*David Rosenthal—For Commission—Cross.*

he expressed a dissatisfaction with the books, with the records in your books; that he asked for the express receipts; that the bookkeeper gave him the express receipts; that you learned that he saw the express receipts and it was then that you came out and insisted that the man leave the premises? A. No.

Q. By the way, do you still have the express receipts on these shipments?

Mr. Haycraft: That is objected to as incompetent, immaterial, and irrelevant.

12425

Q. Was there any subsequent conversations with anyone connected with the Fashion Originators Guild of America and you with respect to the examination of these books? A. Yes.

Q. With whom? A. I think it was with either Mr. Goldston or Mr. Golby, one of the two.

Q. May I refresh your recollection and tell you it was with Mr. Golby? A. Yes.

Q. Do you recall what that conversation was? A. He wanted to know why we would not let him examine the books.

Q. What did you tell him? A. I did not answer that.

Q. You did not answer him at all? A. No. I said we did not want to.

Q. That is all that you said? A. Yes.

12426

Q. You gave no reason for refusing to permit him to examine the books? A. None whatsoever.

A. And the books have not been examined since? A. No, sir.

Mr. Haycraft: I take it that you mean by representatives of the Guild—

By Mr. Albert:

Q. By representatives of the Guild, of course. A. No, they have not.

Q. You referred to Mr. Kalman as your partner. Do you mean by that that Mr. Kalman had an equal stock interest as you in the corporation? To simplify matters, let me ask you this: Has he an equal stock interest in the firm? A. Yes.

Q. That is, do you both own an equal amount of the shares? A. Now?

Q. Yes. A. Now, you put in evidence a letter requesting you to ship Forman of Rochester, N. Y., all goods on order prior to February 16, have you not?

Mr. Haycraft: I put it in, not the witness.

Mr. Albert: You could not put it in without the witness, Mr. Haycraft.

12428

By Mr. Albert.

Q. What was your answer? A. Yes.

Q. At that time you were fully co-operating with the Guild in its program, about February 16? A. Yes.

Q. Is it not a fact that as a co-operating manufacturer you received letters of similar import from the Guild to the effect that any red carded store was to be permitted to receive, and that you were permitted to ship them any and all goods which they had ordered prior to February 16, 1936? A. No.

Q. No? A. No.

Q. What is the fact, if you know? A. After some length of time had elapsed, and these various stores wrote to the Guild, it is my recollection at some time later that the Guild's request of me, or at least I understood at least it was a courtesy to the stores that they permit the various Guild members to ship merchandise to these various red carded stores and that was in order not to create any hardship.

Q. Upon the various stores? A. Yes.

12429

12430

*David Rosenthal—For Commission—Cross.*

Q. I believe it is obvious from your testimony that you are not quite certain of the relationship that existed at that time, but would you say from your knowledge of the facts at that time that any red carded store which had requested the goods be shipped to it which it had ordered prior to February 16, would have been shipped goods with the consent of the F.O.G.A.?

Mr. Haycraft: I object.

A. Yes.

Examiner Averill: Overruled.

12431

*By Mr. Albert.*

Q. In connection with that understanding that they receive their goods which they had ordered prior to February 16, does the mention of the Wm. Filene's Sons & Company's suit in Boston, Mass., refresh your recollection as to the time when that understanding existed? A. I do not recall the length of the time or anything about it.

Q. I know you do not recall the exact date, yes, but you do recall the fact that if any red carded store had desired it they could obtain the goods which they had ordered prior to February 16?

Mr. Haycraft: I object because that is not proper cross-examination.

12432

Examiner Averill: Objection overruled. I think he can testify as to that. Objection overruled, the witness can testify and may answer if he knows.

A. Yes.

*By Mr. Albert.*

Q. Mr. Rosenthal, to save time, I will place it in an all-inclusive question: Is it a fact that you had full notice of this meeting of the committee of the Fashion Originals?

*David Rosenthal—For Commission—Cross.  
Aaron Rosenstein—For Commission—Direct.*

12433

tors Guild of America, Inc., which had been called to pass upon the disagreement or dispute or difference, whichever words you may want to use, which existed between you and the Fashion Originators Guild of America? A. Yes.

Q. And you refused to appear before that committee?

A. Yes, sir.

#### AFTERNOON SESSION.

Examiner Averill: You may proceed.

12434

Mr. Haycraft: I will call Mr. Aaron Rosenstein.

AARON ROSENSTEIN was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

*Direct examination by Mr. Haycraft.*

Q. What is your name? A. Aaron Rosenstein.

Examiner Averill: Your first name is Aaron?

The Witness: Yes, sir.

Examiner Averill: Your next name is what?

The Witness: Rosenstein.

Examiner Averill: How do you spell that?

The Witness: R-o-s-e-n-s-t-e-i-n.

12435

*By Mr. Haycraft.*

Q. Where do you live? A. Hotel Beacon, Seventy-fifth Street and Broadway, New York City, N.Y.

Q. What is your occupation? A. Silk manufacturer.

Q. Where do you have your place of business? A. 131 West Thirty-seventh Street.

12436

*Aaron Rosenstein—For Commission—Direct.*

Q. New York City? A. Yes, sir.

Q. Do you have any other factories? A. That is our selling office. We have a factory in Paterson, N. J.

Q. What is the name of the firm? A. Rosenstein Brothers.

Q. How long have you been in that business? A. Practically all of my life.

Examiner Averill: You will have to tell us how long that was because we cannot tell, from looking at you, just how long that has been.

The Witness: We started Rosenstein Brothers in 1922.

12437

*By Mr. Haycraft.*

Q. You say you are a silk manufacturer? A. Yes, sir.

Q. Describe for the Examiner just what the nature of that business is and just what you manufacture, and so forth? A. We manufacture high class novelties.

Q. Novelty silk goods? A. And tinsels.

*By Examiner Averill.*

Q. Do you mean that you manufacture the cloth or that you manufacture these tinsels or that you manufacture these specialties or one or both or all? A. We manufacture specialties, but tinsel is a cloth.

12438

Q. Tinsel is a cloth? A. Yes.

Q. What kind of cloth? A. A silk cloth.

Q. You make silk cloth also? A. Yes, sir.

Q. What else? A. And prints also.

Examiner Averill: Proceed.

*By Mr. Haycraft.*

Q. Do you manufacture prints? A. Yes.

Q. What sort of machinery do you have to have in your factory for that purpose? A. For printing?

Q. Yes. A. The prints, we do not make them in our own factory but we give them out to be printed, but we make the sketches and the designs.

Q. You have someone else to do the actual printing? A. To make what is known as screens to do the screen printing.

Q. What about the other fabrics which you mentioned, the tinsels? A. Yes.

Q. Describe that fully and give the type of fabrics that you make, and so forth? A. We make a tinsel fabric and silk novelties and silk fabrics which consist of tinsel and silk thread woven together. That is our main line, and the other follows in after that such as prints and fills in our line, because we make quite a full line of goods, we make a lot of products so that we may have a complete line to supply our trade with.

12440

Q. Where do you get your raw material? A. We buy it here in the United States of America.

Q. What does your raw material consist of? A. Silk and tinsel thread. The tinsel thread is imported from Europe and we buy it here in America.

Q. You buy your thread and weave it into cloth? A. Yes, sir.

Q. Do you employ designers for the purpose of designing the fabrics? A. Yes, sir.

Q. Do they originate these designs or do they copy, adapt it from fabrics already manufactured? A. Right now we are originating everything we make.

12441

Q. How long has that been true? A. Oh, for the past year or so.

Q. Before that, what did you do? A. Before then we would design and we would copy also. We have done both.

Q. When you copied, what did you copy from? A. From the import.

Q. But you discontinued copying from imports? A. Yes.

12442

*Agron. Rosenstein—For Commission—Direct.*

Q. When you referred to tinsel, does that mean metallic cloth; is that the same thing? A. Yes, sir.

Examiner Averill: The metallic cloth is the same thing you referred to as tinsel cloth?

The Witness: It is.

*By Mr. Haycraft.*

Q. Is it a fact or not that the design, usually the designs for metallic cloth, originate in France? A. Yes.

Q. Are those designs the designs that you told us you copied when you spoke of copying imports? A. Yes, sir.

12443

Q. But for the past year or so you have not copied imported designs of others? A. No.

Q. You have originated your own designs? A. Yes, sir.

Q. What do you do about foreign designs, or French designs, buy them, buy the material, or what? A. We go to Europe twice a year and we buy fabrics over there to get an idea of the line and then we build upon or around that.

Q. Adaptations, would you say? A. Yes.

Q. Where do you sell these materials after you have finished them? A. We sell them to the dress trade mostly.

Q. Dress trade where? A. In New York City and anywhere there is a dress manufacturer that wants to buy them.

12444

Q. Such as? A. We sell in New York, Boston, Chicago, San Francisco, and Los Angeles.

Q. Do you sell to any other people? A. We also sell department stores.

Q. You sell them all piece goods? A. Yes, sir.

Q. Do you know anything about the Industrial Designs Registration Bureau? A. Yes, I know them.

Q. When did you first learn of the existence of that organization? A. When the N.R.A. started.

*Aaron Rosenstein—For Commission—Direct.*

12445

*Albert M. Post—For Commission—Direct*

Q. The N.R.A. started? A. Yes.

Q. Have you registered your designs with that Bureau?

A. Yes, sir.

ALBERT M. POST was thereupon recalled as a witness for the Commission, and, having been previously sworn, testified as follows:

*Direct examination by Mr. Hagcraft.*

Q. Mr. Post, you are the same Albert M. Post that has heretofore testified in this proceeding? A. Well, not quite the same. I have learned a lot since, but I am the same person. 12446

Q. The same Mr. Post, only more so? A. Yes.

Q. You were called upon to produce during this proceeding correspondence, memorandums, and reports from your files relating to the red carding of certain retail dealers? A. Yes.

Q. Have you complied with that request? A. Yes, I believe that the papers there are the ones.

Q. Now, with respect to the retail dealer, Gertrude Bell, at Ogden, Utah, do you have a red card for her in your files? A. Yes, we had a red card.

Q. You had a red card? A. Yes, that red card was changed subsequently. 12447

Q. What is it now? A. It is a blue card now.

Q. What does that signify? A. Well, looking at this here it would indicate that this is a retailer whose policy regarding protection of design originations was unknown to us and that efforts had been made to find that out and we have received no replies showing that, so these parties are notified, our members are notified on the blue card.

12448

*Albert M. Post—For Commission—Direct*

that if this retailer comes in their show rooms to get in touch with us.

Mr. Haycraft: I ask to have these three documents marked for identification.

(Documents were thereupon marked for identification Commission's Exhibits 999, 1000, and 1001.)

*By Mr. Haycraft.*

Q. You said a moment ago you made some effort to find out what the attitude of this individual was with respect to—

12449

Mr. Albert: Would you mind speaking a little louder, Mr. Haycraft?

Mr. Haycraft: No, I would not mind.

*By Mr. Haycraft.*

Q. —to the particular store as to its attitude towards protection? Q. Yes, sir.

Q. Just what means did you take to find that out? A. Are you asking me generally or specifically in regard to this store?

Q. Well, take this one specifically and we will work to a generality from this specific instance. A. I think it would be a little safer if you would let me answer generally, first.

12450

Q. Do so. A. A member of the Guild may desire or inquire of us as to whether it is a co-operating retailer, or what their policy is, and the usual procedure in such instances is as follows: The manufacturing firm, the member, will write to them their own letter. If they do not hear from them within a week or ten days or two weeks that request is followed up by another, and there are a series of letters which are sent out which are these.

Q. Referring to Commission's Exhibits 999, 1000, and 1001 for Identification. A. That is correct. These are the three letters.

Q. Commission's Exhibit 999 for Identification is the first letter? A. First.

Q. How long do you wait before you send out the second letter? A. Well, that is, I think, determined by the remoteness of the retailer from New York and whether it takes one day for a letter to get there, or three or four days, but usually the minimum would be a week to ten days between letters.

Q. Then, how long do you wait before the third letter is sent out? A. The same period would be used.

Mr. Haycraft: I offer these letters in evidence.

Mr. Albert: No objection.

(The paper heretofore marked for identification Commission's Exhibit 1001 was marked as an exhibit and received in evidence.)

*By Mr. Haycraft.*

Q. Calling your attention to the firm, Wilbur Rogers, would your testimony be the same with respect to that retail dealer? A. Yes, except that I have a recollection that they were contacted personally on several occasions.

Q. You mean you personally got a statement from them as to their policy? A. Yes.

Q. But you have nothing else in writing; is that right? A. That is correct.

Q. Does a blue card at the present time have a significance with respect to this firm the same as the one you just referred to? A. That is right.

Q. In other words, they are not to be sold, and if they make inquiries they are to get in touch with you before they do any business with them? A. That is correct.

Q. I now call your attention to Sloan & Strobel, Baltimore, Md., and ask you if you have a red card with that organization? A. May I see what you have in that regard, Mr. Haycraft?

12454

*Albert M. Post—For Commission—Direct*

Q. Yes. Why was that firm red carded? A. This folder has no correspondence and yet I seem to have some recollection that there is already in evidence some correspondence on this. It may be that our files were cleaned out at the time that we delivered these papers to you and that might be the answer.

Q. Does the card itself give any indication for the reason for the red carding? A. Yes, it says, "an apartment house shop," and refers to a letter of the Baltimore Guild.

12455

Q. Calling your attention to Commission's Exhibit No. 132, I will ask you if this letter is the letter you have in mind, the same being a letter from the Baltimore Guild to Mr. Golby under date of March 28, 1935? A. Yes, that appears to be the letter, Mr. Haycraft.

Q. It was on the basis of that letter that you put the red card in your file?—that you red carded this store? A. Not exactly on the basis of the letter, but on the basis of our standards of merchandising.

Q. It was information that you received in that letter which caused you to do so? A. Yes.

Q. Now, calling your attention to the firm of Turner Sladin, Daytona Beach, Fla., is that firm red carded in the same category as the previous firm in Utah? A. It is the same thing. It appears in the current record as a blue card.

12456

Q. The blue card has the same significance? A. It has the same significance.

Q. Is it also your testimony that the letters, Commission's Exhibits 999, 1000, and 1001, were used to ascertain the attitude of this firm? A. Well, I do not say that, Mr. Haycraft. I say that that is our procedure. I cannot swear it nor do I believe that there is anybody who is equipped to say definitely under oath that those letters were sent out in every case, but I know that that is our procedure, and I believe that that is correct.

Q. Will you indicate for the record what information you have on that red card with respect to this concern, to save the trouble of putting the red card in evidence? A. The card reads, after the name: "O. K. to ship \$6.75, \$7.75, \$8.75 protective affiliates. Does not conform to the standards of fair trade of the F.O.G.A. Take out yellow card and insert red."

Q. What date? A. 10-29-35.

Q. What is the date of the blue card? A. April 30, 1936.

Q. It says what? A. "Fails to co-operate. Do not sell. Refer to the Guild to adjust matters."

Q. Now, calling your attention to the firm of Stenner & Taub, Trenton, N. J., I will ask you if that firm has both a red card and a blue card in your files? A. No.

12458

Q. What is the status of it? A. The status is the same as the others, but I assume that the red card was in the file and the blue card is now.

Q. In other words, what does the red card show and what does the blue card show? A. The red card reads, after the name: "Refused co-operation by not signing proffered declaration October 16, 1935. Red card O.K'd by Messrs. Mallas, Fox, and Gumprechd.

Q. The blue card says what? A. "Fails to co-operate. Do not sell. Refer to the Guild office to adjust matters." The date is March 25, 1936.

Q. Calling your attention to the firm of Karl Winslow, Evanston, Ill., I will ask you what your records show with respect to that firm? A. Our records show that this Karl Winslow, Evanston, Ill., is red carded and the notation on the card is: "Do not sell. Speakeasy shop. Does not conform to the standards of fair trade of the F.O.G.A."

12459

Q. What does that mean, "speakeasy shop"? A. Well, a shop that is not a shop, paradoxical but true. In other words, someone doing business in a residence where you ring bells, and come in and out at all hours, and there is

12460

*Albert M. Post—For Commission—Direct*

no observance of any laws, sanitary or anything else. That is what we mean by the term "speakeasy shop." Briefly stated, it is an illegitimate business.

Q. I now call your attention to the firm of Worth's at Dallas, Texas, and ask you what your records show with respect to that firm? A. They were red carded on February 6, 1936, and they refused co-operation by not signing proffered declaration of co-operation. Subsequently, on March 26, 1936, that was changed to a blue card.

Q. With the same notation on it as the previous blue cards? A. Yes.

12461

Q. I now call your attention to the firm of Wittenberg's Fashion Shop, and ask you what the reason was with respect to that retail shop—Wittenberg's Fashion Shop, Milwaukee, Wis.? A. Absolutely exactly the same as the previous ones.

Q. I now call your attention to the firm of the Douglas Shop, Pueblo, Col., and ask you what are your reasons with respect to that? A. Exactly the same as the previous ones.

12462

Q. I now direct your attention to the firm of Davidson Brothers, Detroit, Mich., and ask you what your records show with respect to that one? A. Well, I have a recollection, Mr. Haycraft, that again some correspondence was submitted on this in Detroit, but I am not sure about that, but I can answer your question that it would appear from our records that I have before me that the Davidsons were co-operating with the Guild as of 8-20-35 and that on November 27, 1935, they were red carded for a breach of their declaration of co-operation; that they were subsequently reinstated and a yellow card was subsequently reinstated, rather, and on the 5th of December, 1935, which on January 8, 1936—

Q. 8th or 18th? A. January 8, 1936, according to this record, a red card was placed back in the file. The last red card says, "See correspondence in the file but I do not see any of this folder."

Q. Is that firm affiliated with Goodwin's? A. I believe they are the same organization, if not the same corporation. They certainly operate together, the same unit.

Mr. Haycraft: I ask to have this document marked for identification.

(The documents were marked for identification Commission's Exhibits 1002-A to 1002-L, both inclusive.)

By Mr. Haycraft.

Q. Will you direct your attention to the Goodwin Company and testify as to what the folder shows as to the red carding and the yellow cards, and so forth in there? A. The experience seems to be the same but the dates are somewhat different. The original yellow card on Goodwin's is August 1, 1935; the first red card is dated September 5, 1935; the next yellow card is dated December 5, 1935, and the existing red card is dated January 18, 1936.

12464

Q. Have you produced any correspondence with the Goodwin firm? A. You have it there.

Q. Showing you Commission's Exhibit 1002-A to and including 1002-L, both inclusive, I will ask you if this file of correspondence is the one which you produced in response to the Commission's subpoena in that regard? A. Yes.

Q. Relating to Goodwin's? A. That is not the complete file but that is this file.

12465

Q. Is that the file that refers to the red carding of that firm? A. Yes, all of these letters do.

(The documents heretofore marked for identification Commission's Exhibits 1002-A to 1002-L, both inclusive, were marked as exhibits and received in evidence.)

12466

*Albert M. Post—For Commission—Direct.**By Mr. Haycraft.*

Q. Mr. Post, I call your attention to the retail firm of Kennedy's Shop, Dallas, Texas, and ask you what your records show in that regard? A. Our records show that this individual was signed up on the declaration of co-operation I believe January 24, 1936, but for some reason that is not included in this file they were red carded on February 24, 1936, and subsequently changed to a blue card on March 30, 1936.

12467

Q. Is there any way you can tell us why the red card was changed to the blue card? A. Yes, this states—no, I do not believe so; you will remember at the time you were at the Guild office that you inquired in regard to this matter and I have tried to check up since that time but apparently it was because of the result of the shopper. I could not tell exactly.

Q. I will ask you if you will have somebody make a note to check up the reason that the shopper gave in the correspondence. A. That was correspondence, if you will recall, Mr. Haycraft, that you asked us about the time you were in the office, and if you will recall I called in my secretary and they have been unable to find the correspondence on this. It appears that there was come but where it is I do not know.

12468

Q. Just make a note of it and if you can find it I would appreciate it. A. Yes, sir. We have already but we will check it up once more. This is Kennedy's.

Mr. Keller: What is the date on the red card?  
The Witness: February 24, 1936.

*By Mr. Haycraft.*

Q. Now, directing your attention to Annabelle Mills, Chicago, Ill., what do your records show with respect to that situation? A. This is an apartment house shop which was red carded on February 19, 1934.

Q. What does the red card show with respect to the reason for the red carding? A. The stated reason is that the apartment house shop does not conform to the standards of the fair trade practices of the Fashion Originators Guild of America.

Q. Now, directing your attention to Mace & Taylor, Kansas City, Mo., what do your records show with respect to this concern, and is there any reason for red carding? A. Well, this is one of the situations where a store failed or refused to advise us regarding its policy, and actions, in regard to style piracy. It was red carded on February 8, 1936, which was subsequently changed to a blue card on March 25, 1936.

12470

Q. A blue card is the same blue card as you have already described? A. Yes.

Q. Now, directing your attention to the firm of Queen Frocks, Chicago, Ill., what do the records show with respect to the reason for red carding them?

Mr. Albert: Were they called as witnesses in Chicago?

Mr. Haycraft: I do not think so but I was not there the last day.

A. This is the same sort of situation as I have just described as pertained to the last one. They did not cooperate on design protection.

Q. What is the date of red carding? A. The date of red carding is December 19, 1935, which was subsequently changed to a blue card on March 25, 1936. May I see that for a moment, please?

12471

Q. Yes. What does your red card say with respect to the reason for red carding? A. Well, the card reads "Refused co-operation by not signing the proffered declaration of co-operation."

Q. Did a committee pass on it? A. Yes, Shapero, Mallas, Fox.

12472

*Albert M. Post—For Commission—Direct*

Q. They are manufacturers? A. Yes. They are members of the board of governors.

Q. Members of the board of governors? A. Yes.

Q. Directing your attention to the firm of Lord's Dresses, Louisville, Ky., what reason does your record show for this firm's red carding? A. Well, it appears from these records that the New York office for that concern notified us of the store's policy. The card is not dated so I cannot tell the date, but again I would have to check from the record that the store itself repudiated that agreement on February 19, 1936, and at that time the yellow card was taken out and a red card inserted.

12473

Q. Do you have any correspondence in your file with respect to it? A. Apparently.

Q. But that is your recollection, or do you have any recollection as to why or why not this was repudiated? A. No, I have none except, Mr. Haycraft, again you will recall in the office there was some point as to whether you wanted some correspondence immediately before the red carding and this is the way these folders were prepared. I will check back and look in these files if you wish me to see if there is any additional correspondence.

Q. Wherever you have no recollection, will you please get that correspondence, if you can find it? A. I will.

The Witness: Mr. Keller, will you kindly make a note of these things so that we can check them up?

Mr. Keller: Yes.

12474

*By Mr. Keller.*

Q. I direct your attention to the firm of Lord's Dresses of New Orleans, La. I do not know whether that is the same organization or not, and I will ask what these records of yours show with respect to the red carding of that firm? A. Would you mind letting me see that one of Lord's of Louisville, Ky., with that record on it, please?

Q. Yes. Here they both are. A. There is nothing in these regarding any connection or to indicate that they are the same transaction, but the transaction would make it appear that they are. Lord's of New Orleans also was notified through their New York office of the yellow card and the yellow card is dated February 19, 1936, and that coincides with the Lord's of Louisville. That declaration was apparently repudiated by Lord's of Louisville and by Lord's of New Orleans and changed to a red card on the same date.

Q. Who is their New York office? A. Well, on the card—I do not know—except on the card for the Louisville Lord's the name is mentioned as Sidney Gottlieb.

Q. Would it be possible that you had some oral telephone conversation or other oral statement from Mr. Gottlieb in respect of the change in the status of this firm? A. Yes, it would be possible.

Q. You do not have any recollection of that? A. I do not have any recollection.

Q. I now direct your attention to the firm of Goldsmith of Pittsburgh, Pa., and ask you what your records show as to what the cause of that firm being red carded? A. Well, it refers to a letter of the Retail Merchants Association, dated March 24, 1934.

12476

Mr. Haycraft: I ask to have this document marked for the first letter 1003-A, and for the second letter 1003-B.

12477

The letters were marked for identification Commission's Exhibits 1003-A and 1003-B.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 1003-B, being an original letter from the secretary of the Merchants Association, dated March 24, 1934, attention of Mr. "Golley,"

12478

*Albert M. Post—For Commission—Direct*

which was evidently intended to be Mr. Golby, and ask you if that is the letter referred to in your last answer? A. Yes, I believe it is.

Q. And is the reply to that letter made by your office Commission's Exhibit 1003-B by Mr. Golby a carbon copy of the letter which he wrote to the Merchants Association, Pittsburgh, Pa., dated March 26, 1934? A. Yes. It seems to do with an apartment shop.

Mr. Haycraft: I offer this in evidence.

Mr. Albert: No objection.

(The letters heretofore marked for identification Commission's Exhibits 1003-A and 1003-B were marked as exhibits and received in evidence.)

12479

*By Mr. Haycraft.*

Q. I now direct your attention to the firm of Esther Cantor, Reno, Nevada, and ask what your red card shows with respect to the red carding of that store? A. Well, that is the same situation I previously described where we had no way of being advised or advising our members as to the policy of these stores that were trying to buy, and we issued a red card in this case on February 6, 1935, and on March 25, 1936, that was changed to a blue card.

12480

Q. I now direct your attention to the Helene Shop, Stamford, Conn., and ask you to testify what your record shows with respect to the red carding of that store? A. My records show that this is an apartment house shop; that the red carding was originally issued on May 9, 1935, and that we had no signed declaration of co-operation at that time, and the red card was subsequently changed to a blue card on March 25, 1936.

Q. Now, I call your attention to the firm of Curtis Styles, Spokane, Wash., and ask you the same question, what does your record show in regard to that? A. A re-

usual—a reference to the file indicates that they refused to file advice with us regarding its policy of protecting style originations. The red card was issued February 6, 1936, and changed to a blue card on March 26, 1936. The same conditions and situation as has been described for the others.

Mr. Haycraft: May it please your Honor, I have now reached a convenient stop to adjourn, and inasmuch as we have reached an adjourning point I ask that we adjourn until to-morrow morning.

Examiner Averill: Gentlemen, we will adjourn to reconvene to-morrow morning at 10 o'clock.

(Whereupon, at 4.30 o'clock P. M., December 14, 1936, the hearing in the above-entitled matter was adjourned.)

12484

*Aaron Rosenstein—For Commission—Direct.*

Room 901, 45 Broadway,  
New York, N. Y.,  
December 15, 1936.

Met, pursuant to adjournment, 10 A. M.

Before: EDWARD M. AVERILL, *Examiner.*

(Same Appearances.)

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PROCEEDINGS.

12485

Examiner Averill: Proceed, gentlemen.

Mr. Haycraft: If your Honor please, I will recall Mr. Aaron Rosenstein back on the stand.

AARON ROSENSTEIN resumed the stand and testified further as follows:

*Direct examination (continued) by Mr. Haycraft.*

Q. The last question was whether you had registered designs and you stated that you had. A. Yes.

Q. When did you first register your designs with the Industrial Design Registration Bureau? A. We registered jacquard designs when the N.R.A. was in business. It was in the code to register them.

12486

Q. You registered jacquard designs? A. Yes, sir.

Q. Did you register any other designs at that time? A. No. We were not making prints at that time so we had no need to register.

Q. What else were you making? A. We were making tinsel fabrics.

Q. Tinsel fabrics? A. Yes.

Q. Did you register your tinsel fabrics also? A. No. They were excluded from registration.

Q. When did you start making prints? A. Last year.

Q. What time? A. Around October.

Q. Can you give me any more definite time than that?

A. I cannot tell you any more definite date than that. We started building our line in October, 1935.

Q. That is, your line of prints? A. Yes.

Q. You had not been handling or making any prints before that at all? A. No, sir.

Q. Is there any difference in the class of trade to whom you sell prints, tinsels and jacquards? A. No, we sell the same thing to all the trade that we sell to.

Q. In other words, your same customers buy prints that buy tinsels? A. Yes.

Q. That buy jacquards? A. Yes.

Q. How long after you began to manufacture prints did you register your designs with the Industrial Design Registration Bureau? A. We registered from the beginning.

Q. Why did you do that? A. Because it was the procedure of the silk manufacturers to register prints. We followed suit.

Q. Had you registered your tinsel and jacquard designs before that time? A. No, not before that.

Q. Did you thereafter register them? A. Yes.

Q. When did you start registering your tinsels and jacquards? A. This year.

Q. What time? A. We started making our samples, I believe it was, in March and April.

Q. Both of jacquards and tinsels? A. Yes, sir.

Q. Why did you continue to register them in March and April of this year? A. Our customers would ask us if we would register them and I decided it would be to the best interests of our concern that we register them.

Q. Who were your customers at that time? A. We sell the entire cutting-up trade, or better trade.

Mr. Keller: Louder, please.

The Witness: We sell the entire cutting-up trade, or better trade.

12490

*Aaron Rosenstein—For Commission—Direct.**By Mr. Haycraft.*

Q. What customers asked you to register your designs of jacquards and tinsels with the Industrial Design Registration Bureau? A. There is no one in particular. My partner went around and had a talk with a few of them and he decided when he came back to register the jacquard designs.

Q. Do you know with whom he talked to? A. No, I do not.

Q. Where did he go? A. In to the trade.

Q. Who are your principal customers for jacquards and tinsels and who were they in March and April of this year?

12491 A. You want the names of them?

Q. I want the names. A. —or do you want the trade?

Q. I want the names. A. Well, we sell most everybody in the better brackets, as we would call it.

Q. By "better brackets," what do you mean by that? A. People that make dresses from \$16.75 up.

Q. Are they known as Guild manufacturers? A. I believe they are.

Q. Why did you not register these designs for jacquards and tinsels that you had been making during the past? A. What?

Q. I believe you said you had registered your jacquards over the period of time the N.R.A. was in effect? A. Yes.

Q. What period of time was that? A. I believe it started in 1933.

12492

Q. And ended when? A. I believe they declared it—

Mr. Keller: —unconstitutional.

A. —when they—

Q. Some time in 1935? A. Yes.

Q. Why did you not register your jacquard designs between the time that the N.R.A. ended and March of this year? A. It was not necessary.

Q. Why was it not necessary? Explain that. A. I did not quite get the question.

Q. Why was it not necessary? Explain the reason. A. It is not necessary to register them until—at all at any time, in fact, but we have done this voluntarily for what we think is the best interests of our concerns—to register our designs.

Q. Did any manufacturer ask you to register designs prior to March of this year? A. Yes.

Q. When? A. In the past few years.

Q. For the past few years? A. For the past few years, yes.

Q. But it was not until March of this year that you decided to do it? Is that right? A. Yes, sir; that is right.

12494

Q. Had it been customary in the trade for textile manufacturers to register jacquards with this Industrial Design Registration Bureau prior to March of this year? A. Yes.

Q. Now, the tinsel designs, you never had registered them with the Industrial Design Registration Bureau prior to March of this year, had you? A. No.

Q. Had you been requested to do so by manufacturers of garments, garment manufacturers prior to March of this year? A. We had not been requested at any time by them—by that, I mean that no one forced us to do it. We done it of our own free will for the best interests of the business, of our business.

Q. Well, was there any change in the past in the way business was done in March of this year that made it necessary for you to do it? A. No. We started the season with registration, or registering of our tinsels, jacquards, and prints, and we had a very successful season.

12495

Q. Are there foreign manufacturers of those fabrics? A. Yes.

Q. Had they been registering their designs with the Industrial Design Registration Bureau? A. Yes.

12496

*Aaron Rosenstein—For Commission—Direct.*

Q. Had they had anything to do with your decision, or did that have anything to do with your decision not to register your designs prior to March, 1936? A. Yes.

Q. What did that have to do with it? A. Well, they are permitted to bring over a half yard sample and register it with the Design Registration Bureau and that prevents American manufacturers from making it, and we did not think it was fair.

Q. That is not true with respect to prints, is it? A. The same thing applies to prints.

Q. To your knowledge, how long has this Industrial Design Registration Bureau been operating? A. For registering designs?

12497

Q. For the registering of designs and for the registering of fabrics? A. It started compulsory with the N.R.A., but prior to that, I believe, to the best of my knowledge, the Design Bureau was operating.

Mr. Albert: I move ~~that~~ the answer be stricken out as the question was to his knowledge when the Registration Bureau started, and the witness' answer is purely a guess.

~~The~~ Witness: It is a guess.

Examiner Averill: Read the question and answer. (Question and answer were read.)

The Witness: I do not know. I would rather not answer that question.

12498

Examiner Averill: If you do not know, it is always the best thing to say so—always.

Q. Mr. Rosenstein, I call your attention to the following language in Commission's Exhibit 250, which is known as the pledge of the members of the Guild with the Textile Division of the Fashion Originators Guild of America, and which reads as follows: "1. That on and after January 15, 1936, we will purchase only such prints, jacquards, metals, and laces and embroideries which bear registration num-

bers showing that the designs have been registered at the Design Bureau of the National Federation of Textiles, or the Fashion Originators Guild of America, Inc. Should we for any reason purchase or use an unregistered design, we will upon instructions from you authorize a representative to return them." I will ask you whether or not the substance of that passage I have just read to you was ever brought to your attention by anyone? A. Yes.

By Mr. Haycraft.

Q. Who brought that to your attention? A. Well, I believe we saw it in the papers.

Q. What papers? A. In "Women's Wear."

12500

Q. A public announcement to the trade? A. Yes, sir.

Mr. Haycraft: I ask that this be marked for identification, this being a copy of a letter, one page, dated December 17.

(A letter was marked for identification Commission's Exhibit 1004.)

By Mr. Haycraft.

Q. I show you Commission's Exhibit 1004 for Identification, which purports to be a copy of a letter from Irene L. Blunt, and addressed to the members of the trade, and dated December 17, 1935, and ask you whether you ever saw that or the original of that?

12501

Mr. Kaufman: May I see that, Mr. Haycraft?

Mr. Haycraft: No, not until the witness gets through with it.

Mr. Kaufman: I think I can help the witness out.

(Mr. Kaufman thereupon turned the document over and indicated certain writing on the back of the document to the witness.)

12502

*Aaron Rosenstein—For Commission—Direct.*

A. Oh, yes, that is the one we sent to you. This is our copy. This is the one we sent to you.

*By Mr. Haycraft.*

Q. In other words, you saw the original of this when it was gotten out by your Registration Bureau? A. I believe we did.

Q. Did you receive the original of which this is the copy? A. Yes, I believe so.

Q. On or about December 17, 1935? A. Yes, sir.

Mr. Haycraft: I offer this in evidence.

12503

Mr. Bruce: No objection on the ground it is a copy.

Examiner Averill: Gentlemen, the paper in question which has been marked Commission's Exhibit 1004, for identification, and which purports to be a copy of a paper on the letterhead of the Industrial Design Registration Bureau, New York City, addressed to the trade, and bearing date December 17, 1935, and signed apparently by Irene L. Blunt, Director, will be received in evidence and marked Commission's Exhibit 1004.

(The letter heretofore marked for identification Commission's Exhibit 1004 was marked as an exhibit and received in evidence.)

12504

Mr. Albert: I am merely objecting so that it will not be thought that I let it go in as binding upon the F.O.G.A. by default. I am objecting on the ground that anything said in there is made without any authority by the Fashion Originators Guild of America, and is in no way binding upon it.

Examiner Averill: If that is the case, I will, as a matter of form, overrule the objection and the paper in question has already been received in evidence and has heretofore been marked Commission's Exhibit 1004.

*Aaron Rosenstein—For Commission—Direct.*

12505

Mr. Albert: That is the reason I made the objection after you had received it.

Mr. Kaufman: That is true, your Honor.

Examiner Averill: Proceed.

*By Mr. Haycraft.*

Q. Between January 1, 1936, and the date that you first registered your jacquards and tinsels in March, 1936, did you have any difficulty in selling those fabrics to members of the Guild? A. We were not making tinsels.

Q. No? A. They were out of season.

Q. When did you start making them? A. We started making our line in March and April.

12506

Q. Then, as soon as you started making them you registered them? A. Yes.

Q. Is it your testimony that you never attempted to sell Guild manufacturers tinsels and jacquards between January 1, 1936, and the date you first registered with the Industrial Design Registration Bureau? A. Yes, we did not sell any.

Q. Is that your recollection? A. No, we did not offer any for sale prior to that time. We did not make them.

Q. What time of the year do you usually make jacquards and tinsels?

Mr. Feldman: Louder, if you please. We cannot hear you at all.

12507

*By Mr. Haycraft.*

Q. What time of the year do you usually make jacquards and tinsels? A. We start about March making sample blankets.

Q. Over what period of time? A. The first line sells in June—it runs for about six months.

Q. Prior to the time that you began registering your jacquards and tinsels, did you show any of your line to

12508

*Aaron Rosenstein—For Commission—Direct.*  
*Albert M. Post—For Commission—Direct.*

any garment manufacturers that were members of the Guild? A. No, it was not ready. It was out of season.

Q. I will ask you the same question with respect to your prints. A. We had registered the prints.

Q. You had registered your prints in October? A. Yes.

Q. Prior to the time that you registered your prints, did you attempt to show your line of prints to garment manufacturers who were members of the Guild? A. We did not have any. That was our first entrance into the print business.

12509

ALBERT M. POST resumed the stand and testified further as follows:

*Direct examination (continued) by Mr. Haycraft.*

12510

Q. Mr. Post, continuing the testimony that we were pursuing yesterday, I call your attention to the Chelsea Specialty Shop, Atlantic City, N. J., and I will ask you what your records show with respect to the reason why this firm was red carded? A. Well, our records show that this shop originally notified us of its co-operation August 10, 1933, and on December 4, 1934, apparently we were advised that they carried only bathing suits. Furthermore, that they did not operate from commercial premises at the Hotel Chelsea—but are a commissionaire shop who were attempting to purchase dresses for individual customers and not for stock, and what is known in the trade as a commissionaire, they were an apartment house shop and they were known in the trade, as I say, as a commissionaire business. In other words, they take a customer around the market and make a selection and the merchandise is billed to them and they charge the customer something above the cost, a fixed percentage usually. As a re-

sult of that investigation and information, on January 3, 1935, they were red carded and on April 30, 1936, was changed to a blue card.

Q. And the record shows what the blue card means? A. Yes, the same as I testified to heretofore.

Q. I now direct your attention to Carp's, Inc., St. Louis, Mo. and ask you the same question: A. This store apparently started to co-operate in our program of design protection on August 20, 1935. The record shows that on December 18, 1935, they were red carded. The card indicates "Refused co-operation by not signing proffered declaration of co-operation." That red card was changed to a blue card on March 25, 1936.

12512

Q. I now direct your attention to the firm of Carrollelan's, Salt Lake City, Utah and I will ask you the same question with regard to that particular one as I did to the previous one. A. This is the same situation as the previous one. I get from the record—I am sorry, upon inspection of this record, I cannot give you the original date of the red carding. It is not noted, but the blue card is dated March 6, 1936. On May 20, 1936, a blue card was changed and a yellow card inserted indicating that the store is now co-operating with us in our program.

Q. Do you have any signed declaration of co-operation from this organization? A. Well, I assume that we have some knowledge or information on it, yes.

Q. I would be glad to have you look that up and see whether the declaration of co-operation was signed. A. Well, I am having all of these things looked up because, as I pointed out to you yesterday, our files are not complete.

12513

Q. I now direct your attention to the firm of Stern & Company, Chicago, Ill. and ask you the same question with respect to them. A. Well, this record, plus my recollection, is that there is no Stern & Company and that this is one of the situations that I described to you the other day,

12514

*Albert M. Post—For Commission—Direct.*

of people who have gone around the market under fictitious names having signed what appeared to be memoranda and that the person represents himself as being in business and thereby sees the lines of the manufacturers.

Q. What notations do you have on that? A. "Apparently for the purpose of sketching or copying merchandise, of making copies."

12515

Q. What notation do you have with further reference to that? A. The red card is dated no particular date, as I see it here, but has this statement on it, "Have representative of this firm get in connection with the Guild office when in town." It also says, "Has been calling on Junior misses houses and the mail addressed to him has been returned—it is signed 'Reg. Sut e-Fox,' also received inquiry in mail for dresses and so forth. Miss Killian's investigation made and found that the name on the board gave the room as No. 1110, however the young lady in the office said their name is the Triangle Sales Company and they have nothing to do with Mr. Stern and do not know what his business is. The renting man said that he was a new tenant but does not know his business.

Q. Who is Miss Killian? A. Miss Killian at that time was the Guild shopper in Chicago.

Q. I now direct your attention to the firm of I. J. Shearer Company of Baltimore, Md. and ask you the same question with respect to that concern?

12516

Mr. Haycraft: First I ask to have these documents marked as follows: I ask that a copy of a letter dated November 1, 1935, from Miss Ellen Lapedus to Mr. Jack Goldston, Fashion Originators Guild be marked Commission's Exhibit 1005-A for Identification. I ask that a copy of a letter under date of November 6, 1935, from Fashion Originators Guild of America, by J. M. Golby, executive secretary, to I. J. Shearer & Bro., 105

*Albert M. Post—For Commission—Direct.*

12517

West Lexington Street, Baltimore, Md., be marked Commission's Exhibit 1005-B for Identification.

(The letters were marked for identification Commission's Exhibits 1005-A and B.)

*By Mr. Haycraft.*

Q. What do you say as to that? A. Well, it appears from these records that on October 25, 1935, this retailer signed a declaration of co-operation. Our members were notified of that and a green card which indicates merely that they are not members of the local retail guild was issued. This was brought in apparently and this party bought some goods from one of these affiliates and from the attached correspondence it would appear that they cancelled their order and advised us that they were not interested in our price goods which we corresponded with them about and then they wrote to us further and then we notified our members on a red card on November 7, 1935, with instructions to take up the green card, or take out the green card and insert the red card.

12518

Q. I show you Commission's Exhibits 1005-A and B, both for Identification and ask you if this is a copy of the correspondence between yourself and this dealer? A. Yes.

Q. That you referred to? A. Yes, I believe it is.

Mr. Haycraft: I offer these in evidence.

12519

*By Mr. Haycraft.*

Q. I notice this is signed by Mrs. Lapedus, is she your shopper in Baltimore, Md.? A. She is.

Mr. Keller: No objection.

Examiner Averill: Gentlemen, the papers heretofore marked Commission's Exhibits 1005-A and 1005-B, will be received in evidence and marked Commission's Exhibits 1005-A and 1005-B.

12520

*Albert M. Post—For Commission—Direct.*

(The papers heretofore marked for identification Commission's Exhibits 1005-A and 1005-B were marked as exhibits and received in evidence.)

*By Mr. Haycraft.*

Q. I now call your attention to the firm of Sally's, Baltimore, Md. and ask you the same question with respect to that firm? A. Well, this correspondence file here indicates that on January 4, 1936, a member of the Guild, Grossman & Greeneberg, asked us to send a declaration to Anna—~~I~~ just do not make out the last part of the name, in Baltimore. He apparently believed that this was a firm in the business of retailing garments, dresses. That, we did. Apparently he received back the signed declaration on January 9, 1936. We notified the Baltimore Guild about that and discovered that there was no shop there but that a man by the name of Louis A. Salawetkel was in the automobile salvage business, and his wife by the same name brought up the original correspondence and apparently it had simply come about that he had come up to the market and was trying to buy at wholesale from manufacturers by representing himself to be a retailer. As a result of that, on the 14th of January, 1936, a red card was issued against Sally's which subsequently was changed to a blue card. We have heard no more since then from that concern, if it is a concern.

12522

Q. I now call your attention to a retailer by the name of W. J. Ruggles, Tonawanda, or, I believe, it is Towanda, Pa. and ask you the same question with respect to that firm. A. Towanda. This record indicates W. J. Ruggles of Towanda, Pa., advised us of their policy regarding style piracy on the 8th day of November, 1935. We apparently received an acknowledgment from them of their communication which they replied to on November 23. As a result of that correspondence they advised us on Novem-

*Albert M. Post—For Commission—Direct.*

12523

per 30, 1935, to cancel their declaration, and the record shows that on the 4th day of December, 1935, a red card was issued.

Q. I now direct your attention to the firm of Marie Leavell, Dallas, Texas. A. Well, it appears from this file that Marie Leavell was conducting a business from her home, and that when we were notified of her desire to cooperate with the Guild, we did not have any shopper in Dallas, Texas, at the time, we wrote to numerous retailers, in order to find out whether or not the facts as we understood them were correct. It appears from this record that she does, as I stated before, operate an apartment house shop. Therefore, it appears that we were notified thereafter of this fact on the 8th day of August—no, August 17, 1933. It would appear that on March 16, 1936, that she is either in business of a shop of some kind, or something that I cannot tell now, but in any event a yellow card was issued as of this date.

12524

Mr. Haycraft: I ask to have this document marked for identification.

(Documents were marked for identification Commission's Exhibits 1006-A to 1006-M, both inclusive.)

By Mr. Haycraft.

Q. Mr. Post, I show you Commission's Exhibits 1006-A to 1006-M, both inclusive, for identification and ask you if this exhibit consists of correspondence between the Guild and Dallas, Texas, retail dealers and taken from your files? A. Yes, these are copies of correspondence taken from our files.

12525

Mr. Haycraft: I offer them in evidence.

Mr. Albert: No objection.

12526

*Albert M. Post--For Commission--Direct.*

(The documents heretofore marked for identification Commission's Exhibits 1006-A to 1006-M were marked as exhibits and received in evidence.)

*By Mr. Haycraft.*

Q. I now direct your attention to the retailer Ed Schuster Company, Milwaukee, Wis. and ask you to state in answer to that as you have in answer to question along a similar line with regard to other retailers? A. The file indicates that Schuster's originally notified us of their co-operation on July 17, 1933, and that we had considerable correspondence with them during the month of January, 1936, as well as receiving some reports from the shopper at Milwaukee, Wis. As a result of that, on February 11, 1936, a red card was issued.

Mr. Haycraft: I ask to have this "Report of Refusal or Failure to Co-operate" marked as Commission's Exhibit 1007 for Identification.)

(The paper heretofore marked for identification Commission's Exhibit 1007, was marked as an exhibit and received in evidence.)

*By Mr. Haycraft.*

Q. I now direct your attention to the firm of Esterlene Frocks, Birmingham, Ala. and ask you the same question with respect to that company. A. This is a firm that according to these papers here, and from my own recollection, just buys goods and never pays for them. They had originally indicated anti-piracy co-operation on April 17, 1935. We found, however, that, as I said before, that all the people that they had bought from during that period, they did not pay, and they would come back and go to new people, so we issued a red card on October 2, 1935, asking our members to have that retailer communicate with the

*Albert M. Post—For Commission—Direct.*

12529

Guild office should they come in, and before they were shown any merchandise. The red card was subsequently changed to a blue card on April 30, 1936.

Q. Mr. Post, is there any rule or regulation in the Guild that—

Mr. Keller: Yes, there is.

*By Mr. Haycraft.*

Q. —authorizes the insertion of a red card for the reasons stated?

Mr. Albert: For what reasons?

*By Mr. Haycraft.*

Q. Failure to pay your bills? A. The answer is yes. I should say the simple ruling of reason, if you do not get paid for your goods there is not much sense in shipping them out.

Mr. Albert: That was not an A.M.C. store, was it?

The Witness: No.

Mr. Haycraft: I ask to have the following documents marked for identification.

(The documents were marked for identification Commission's Exhibit 1008-A to 1008-E, both inclusive.)

*By Mr. Haycraft.*

Q. I show you Commission's Exhibits 1008-A to E and ask you to identify this as documents taken from your files with respect to the Esterlene Frocks account? A Yes. I identify that as copies in our files and these are the copies that were given you. Is that all of it? I do not know.

12530

12531

12532

*Albert M. Post—For Commission—Direct.*

Mr. Haycraft: I offer these in evidence.

Mr. Albert: No objection.

(The documents heretofore marked for identification Commission's Exhibits 1008-A to 1008-E were marked as exhibits and received in evidence.)

The Witness: You understand, Mr. Haycraft, that the situation on that is that there is a blue card now.

*By Mr. Haycraft.*

12533

Q. At the present time? A. Yes. That red card issued merely stated that they should communicate with our office.

Q. I direct your attention to the retailer, The Miller-Wahl Company, New York City and Kansas City, Mo. and ask you to give the same answer as you have to previous retailers. A. This file is headed—I hate to keep repeating this.

Mr. Albert: May I suggest that perhaps you may be able to say the same answer to the same question.

The Witness: I cannot in this case.

Examiner Averill: You cannot because the question there is reference to the things done in that particular intimate case.

12534

The Witness: I do point out, however, again, that Mr. Haycraft asked us for the correspondence directly incident to the red carding of these accounts. In some cases there are things that have extended over a long period of time that did have to do with the situation and I am answering purely from the files as they appear here. In this case, it appears that the Miller-Wahl Company, which operate a chain of stores, has under the name of

the three sisters, I believe, signed declarations with the Guild on January 2, 1935. It appears that in November, 1935, at least, one of their store managers claimed to know nothing about the policy of Miller-Wahl regarding style piracy and failed or refused to remove copies from sale.

Q. Failed to remove copies from sale? A. Yes. In this particular he did both, he failed and refused to remove copies from sale.

Q. I notice you use the phraseology "failed or refused"; what do you mean? A. Yes, failed or refused. They apparently agreed to take some of this off-sale and they then failed to do so, and then they also refused to take some others off. Then in December this correspondence indicates that a similar situation prevailed in their Chicago store, which I believe is their headquarters after correspondence and telephone conversations—

Q. Would you mind attempting to state what their contention was, if any, with respect to this last transaction that you refer to? A. The one in Chicago was that their position was that they would not protect any merchandise from style piracy if the individual manufacturers who originated the style would not agree with them to sell them the original. In other words, they said, "If you do not sell us the original, regardless of how you may feel about it for your individual business or what your individual policy is, we are going to get it and carry copies of those goods." So, as a result of this correspondence, conferences, and telephone messages in which they maintained that position, on December 18, 1935, the retailer's red card was issued.

Q. What was the fact with respect to whether or not certain Guild manufacturers would not sell this chain of stores? A. Well, from this record it appears that a Guild member in Chicago, the Junior Guild, did not want to sell them its merchandise, that particular merchandise.

12538

*Albert M. Post—For Commission—Direct.*

Q. Does the correspondence disclose why? A. I do not believe that this correspondence does. If you have it there?

Q. Do you know, as a matter of fact, why? A. Oh, goodness, no. I could not answer why.

Q. Do you know whether this customer—that is, to say, the Junior Guild, had the policy of confining its line to certain retailers or certain dealers in certain localities?

A. I do not even know that. They follow the individual policy which the firm decides it is best for its own business.

Mr. Albert: Is this one of the different kind of cases?

12539

Mr. Haycraft: Yes.

Mr. Albert: I suppose this is supposed to be a red card without reasons?

Mr. Haycraft: I will attend to the reason for it in argument when that time comes. Do not worry about that.

Mr. Feldman: That is what we are worrying about.

*By Mr. Haycraft.*

12540

Q. I call your attention to the firm of Horne & Fried, Pittsburgh, Pa. and ask you the same question with respect to that firm? A. This case seems to be similar to others that I have already described, in that this man apparently notified us of his policy on July 12, 1935, and then advised our shopper that he does not buy our goods and is not interested in the Guild program so we wrote to him seeking to confirm that fact, or setting the facts as we understood them, and subsequently on September 20, 1935, or about that time, we issued a red card.

Q. I now call your attention to the Pallais Royal account, Houston, Texas and ask you to state the facts with respect to that. A. Well, this appears to be the case of a

*Albert M. Post—For Commission—Direct.*

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retailer who was co-operating with the Guild as of November 9, 1935, but when the shopper in December, 1935, pointed out some copies that he had there on hand he not only refused to remove them from sale but put them in the window.

Q. Then what happened? A. Well, we were advised of that and we wrote to him about it and he told our shopper that he was not interested in Guild merchandise or being what he called a "member of the Guild"; apparently got in touch with our New York office who agreed to this—or, rather, who according to this notation, thought that arbitrary, they thought it arbitrary, but I do not see how they could say so because they did not want to co-operate and they put the goods in the window.

12542

Mr. Albert: Startling new, that case, I call it.

Mr. Haycraft: I suggest counsel be sworn and take the witness stand if he wants to testify.

Mr. Albert: I will let you do the testifying.

Mr. Haycraft: I would be obliged if you would let the witness do it.

Examiner Averill: Gentlemen, please stop that and proceed.

*By Mr. Haycraft.*

Q. Directing your attention to the account of Florence Parlott, Baltimore, Md., I will ask you the same question with regard to that? A. Well, the record does not show how we came to inquire about Florence Parlott, but it does appear that we were brought in direct contact with her at some time or another. In other words, we were advised by the Baltimore Guild after that on February 19, 1934, that this was a Baltimore dressmaker operating a dress making business operating from a private residence where the living room had been converted into a display room, and the other rooms used for dressmaking, although

12543

12544

*Albert M. Post—For Commission—Direct.*

they may have lived there. The red card was issued on February 19, 1934. Now, it appears that the first letter we had from Florence Parlott is dated May 6, 1936, in which she wanted to know why they were red carded. We knew that they had been advised that they had been red carded by the attorneys for Wm. Filene's Sons & Company, Boston, Mass., because they were writing to the red carded stores. That seems to be their only interest in the entire transaction. We replied to that letter and they never replied to us.

12545

Q. Calling your attention to the firm of Holman's Department Store, Pacific Grove, California, I will ask you the same question with respect to that? A. Well, it appears that this was a firm who bought some merchandise from one of our members; that is, attempted to buy some merchandise, and that the member wrote to them enclosing a declaration of co-operation and they replied by stating the reasons why they would or could not co-operate with the Guild. That letter was turned over to us and we made a detailed reply. As a result of their initial decision, it appears from this record that they were red carded on June 27, 1935, which was changed to a blue card on March 26, 1936, and on April 8, 1937, they apparently—

Q. When? A. April 8, 1936, I beg your pardon, they apparently agreed to co-operate because a yellow card has been issued.

12546

Q. Have you a copy of their agreement? A. No, I do not have it here.

Q. Will you look that up for me? A. Yes, sir; I will.

Mr. Haycraft: The hour now being 12.30, I suggest that we recess until 2 o'clock, if your Honor please.

Examiner Averill: We will take a recess until 2 o'clock.

(Whereupon, at 12.30 o'clock P. M., a recess was taken until 2 o'clock P. M. of the same day.)

*Albert M. Post—For Commission—Direct.*

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AFTERNOON SESSION—2 P. M.

Examiner Averill: Gentlemen, the hearing will come to order. You may proceed.

ALBERT M. POST resumed the stand and testified further follows:

*Direct examination (continued) by Mr. Haycraft.*

Q. I now call your attention to a dealer known as Frances Malsh of Chicago and ask you the same question I have asked previously with respect to the previous alers.

12548

Mr. Albert: This was the deaf woman that was in Chicago and that testified?

A. This apartment house shop in Chicago was red rded on August 22, 1934. I do not know whether all of is correspondence is complete. Some of it is already evidence but I do recall independently that this is a oman, I believe, who testified that she had not even an artment house shop. The woman goes around peddling ods with a car. Yes, I am quite sure—at least, that is, do not remember whether there is any testimony to that ect or not.

*Mr. Haycraft.*

12549

Q. You mean by that that she goes to private homes and es orders at those homes for dresses and then places e orders with the manufacturers, or attempts to do so?

Well, she might do that, or she might sell the garments ectly, the particular garment that she brings along, . I am not sure about that. She can do either.

Q. What does she say in her letter that she does?

12550

*Albert M. Post—For Commission—Direct.*

Mr. Keller: There is some correspondence in the record.

Mr. Haycraft: I withdraw the question.

*By Mr. Haycraft.*

Q. I will ask you whether this account was red carded and if it has been blue carded what the steps were and what the status is at the present time? A. It appears from the file that it was red carded on August, 1934, and the file has never been changed.

Q. So she is still red carded? A. She is still red carded?

Q. Yes. A. Just a moment, please.

12551

Q. Yes. A. It seems to me that is the woman who peddles goods. Yes, that is correct.

Q. Now, I call your attention to the firm of Majestic Dress Company, Boston, Mass. A. Yes.

Q. I will ask you the same question with respect to them. A. My answer is made purely from what these files are, or on the other hand, if I have an independent recollection, as the case may be.

Q. Just what the files show, and then your independent recollection, but just make it clear on the record which way it is all right. A. All right.

Q. Now, if you will answer the question. A. Just a moment, please.

Examiner Averill: Off the record.

12552

(There was a discussion off the record.)

A. Shall I answer the question?

Q. Yes. A. Well, it appears from the correspondence in the file some one by the name of Albert Stern signed a declaration of co-operation representing themselves to be associated with the Majestic Dress Company of Boston, Mass., on or about June 19, 1935. Notice was sent to our members and a yellow card as of that date issued. In

ust, 1935, it appears that a question was raised about Majestic Dress Company being in the retail business. That is, whether or not they were in the retail business, we discovered that they were manufacturers and they no retail business. We wrote them seeking information that, to which they replied that they did not know Albert Stern was; that he was not a representative theirs; and I believe the correspondence indicate that we were not buying any merchandise from our members, and any need for it. The red card was issued, as I before, August 17, 1935, and we placed on April 30, 1936, because at that time it was changed to a blue card. I now direct your attention to the firm of McGlenn Frocks, Minneapolis, Minn. and ask you the same question in respect to them. A. Well, this file of correspondence indicates that the McGlenn Frocks shop of Minneapolis, Minn., knowingly was selling copies of Fashion Original Guild of America members' merchandise, and when it was called to their attention they refused to remove them from sale. They were red carded on the 3rd day of January, 1936. On the 25th of March, 1936, that was changed to a blue card, and it appears from this file that it was changed back to a yellow card on April 22, 1936.

12554

Does the file indicate whether the declaration was signed at that time or not? A. Well, it indicates that it

But there is no correspondence? A. I would say I believe that that was so, that the declaration of cooperation was signed earlier—the correspondence indicates that they had never signed one. I am just a little unsure as to this thing.

12555

I will be glad to have you look that up and give us a copy of it if you have such a copy. A. Yes. I will look that further.

The Witness: Mr. Keller, will you please check up on that?

12556.

*Albert M. Post—For Commission—Direct.*

Mr. Keller: How do you spell that, M-c-G-l-e-n-n? Or is it M-c-G-l-y-n-n?

The Witness: It is either McGlenn or McGlynn.  
Mr. Haycraft: One or the other.

*By Mr. Haycraft.*

12557

Q. I now direct your attention to the Herz Hat Shop, St. Louis, Mo. and ask you the same question with respect to that dealer. A. I am afraid I cannot tell you much about this. It appears that a yellow card was issued on the 26th day of July, 1935, and that a red card was issued on the 18th day of December, 1935, and the red card states that the reason is that they refused to co-operate by not signing the proffered signed declaration of co-operation, and that that red card was changed to a blue card about the 20th day of March, 1936.

12558

Q. I now direct your attention to the firm of Hahne-mann's Dry Goods Company, Jonesboro, Arkansas. A. It appears from this file that on January 24, 1935, a Miss Hess, the New York buyer from Felix Lilienthal's office, who were then the resident buying office for the Hahne-mann's Dry Goods Company, signed a declaration and our members were notified accordingly on December 10, 1935, and we received a letter from this store asking who had signed the declaration of co-operation. When we advised them that, after an exchange of several letters, they requested us to withdraw the declaration and our members were notified by red card on December 10, 1935, which was subsequently changed to a blue card on March 24, 1936.

Q. That letter is November, 1935; is that the date of the letter? A. What did I say it was?

Q. Well, I took the date from the red card, but the correspondence started in November and there apparently were two declarations signed, but as to any other one of them or, in fact, as to either one of them I cannot tell you

as to anything about the date because neither one of them was dated and therefore I cannot tell you anything about the date of either of those.

Q. I see. At any rate, that was the actual situation as a result of the correspondence? A. Yes, that was. They finally wrote us that no one was authorized to sign and that they did not wish to co-operate, in words or in substance.

Q. I now direct your attention to the firm of Gately Clothing Company, Minneapolis, Minn. and ask you what the facts are in regard to that? A. Well, the Gately Shops, as indicated by this folder, are according to my recollection men's stores that operate in several cities, and they put in women's goods. I think there is one in Detroit and Kansas City also, in addition to the ones that you have here.

12560

Q. What is the situation there? A. The record seems very short and very clear. In January, 1936, we wrote sending them a copy of the declaration and that letter of theirs indicates that they do not want to co-operate.

Q. What did they say in that letter? A. "We do not wish to join the Guild."

Q. What else does it say? A. "If you will be good enough to send us a list of the members we will refrain from buying from them in the future." The red cards were issued in the case of Detroit on January 22, 1936, and blue cards—subsequently, blue cards were issued on the 26th, and in the Minneapolis store December 26, 1935, red carded and blue carded on March 24, 1936.

12561

Q. That seems to be a concern who at no time signed a declaration of co-operation? A. Yes.

*By Examiner Averill:*

Q. They at no time signed a declaration of co-operation?  
A. No, sir.

12562

*Albert M. Post—For Commission—Direct.*

Q. And when you sent them a declaration of co-operation they wrote to you and told you they did not want to buy from you. I do not now understand why a red card was issued under those circumstances.

Mr. Haycraft: It is not very clear.

The Witness: Here is the situation.

Examiner Averill: This may be off the record.  
(There was a discussion off the record.)

Examiner Averill: Back on the record.

*By Mr. Haycraft.*

12563

Q. It might be well to clear up a little of this on the record. I will ask you whether or not this is one of the firms that you sent out the form letters about which you testified in your former testimony? A. I believe so. One of them is attached to these letters. Of course, Mr. Haycraft, I can answer that, but I will say to you in all cases that these letters have gone out, generally speaking, but I can be sure of it in this case because the letters are attached.

Q. I see. Now, I direct your attention to the firm of Hertz-Lang, also known as the Florence Hertz-Hazel Lang, Chicago, Ill. I think that is one of the cases that we talked about. A. It is.

12564

Mr. Haycraft: I ask these documents be marked Commission's Exhibits 1009-A to 1009-J, both inclusive.

(The documents were marked for identification Commission's Exhibits 1009-A to 1009-J.)

*By Mr. Haycraft.*

Q. First, I will ask you the date of the red carding of this account. A. January 9, 1936.

Q. What does the red card say about it? A. This firm not up to the standard of fair trade of the F.O.G.A.

Q. I show you Commission's Exhibits 1009-A to 1009-J for Identification and ask you if this is the file of correspondence taken from the records with respect to this account? A. These are copies of letters taken from our files. I do not believe that this—without checking the dates, I do not believe that this is all of the correspondence that we have had with this particular firm.

Q. This is the correspondence that would have to do with the red carding of this firm? A. In my judgment, I would say yes.

Q. You feel that this is sufficient? A. Yes, I think so.

12566

Mr. Haycraft: I offer it in evidence.

Mr. Albert: No objection.

Examiner Averill: Gentlemen, the papers in question which are bound firmly together and have been marked Commission's Exhibits 1009-A to 1009-J, will be received in evidence and marked Commission's Exhibits 1009-A to 1009-J.

(The documents heretofore marked for identification Commission's Exhibits 1009-A to J, both inclusive, were marked as exhibits and received in evidence.)

The Witness: The reason I asked for it back was because I notice that the date of the record is 1936 and this particular Hertz woman was then notorious as a speakeasy shop when I was in Chicago in Mandel Brothers six years ago, and I cannot understand why the card should be dated that date. There must be some back file on that.

12567

*By Mr. Haycraft.*

Q. You do not think that is the first date that you red carded her? A. Well, I would doubt it, but I would say

12568

*Albert M. Post—For Commission—Direct.*

if that is true then I think our system fell down in this particular case because she was advised apparently by some agency of the Government.

Q. There is one in here dated January 6, 1935, and the next one is January 8, 1936; this is the one of January, 1936. A. That is the one that—yes.

The Witness: Mr. Keller, I would like for you to take these and check these up.

Examiner Averill: Commission's Exhibits 1009-A, etc., have been temporarily withdrawn in order to check up on some of the dates concerned therein but will be returned to the record promptly.

12569

(There was a short recess taken. The exhibits were checked and returned to the record.)

*By Mr. Haycraft.*

Q. I call your attention to a firm named "Lord's," having stores in Birmingham, Ala., Atlanta, Ga. and Knoxville, Tenn. and I think they also have a store in Milwaukee, Wis., by the name of Herold's. A. Yes.

12570

Q. I will ask you the same question I have been asking you with respect to stores under the name of Lord's. A. Well, it appears from this record that a declaration of co-operation was signed and given to us by one Emanuel Hirsch on or about July 26, 1935, under the name of Lord's & Gloria Apparel Shops, apparently one company, and that during the fall season they had various transactions in their stores when they failed or refused to remove copies from sale and their managers claimed that they knew nothing about co-operating with the Guild and in December we got in touch with Mr. Hirsch who had signed the declaration and brought to his attention the facts and it would appear, in any event, they felt unable to—we were unable to get any response from him whatsoever, so

*Albert M. Post—For Commission—Direct.*

12571

on the 27th day of December, 1935, the stores were red carded although the card was dated and delivered to our members on the 30th of December.

Q. What was the situation with respect to the Herold Stores in Milwaukee, Wis.? A. I do not see anything in this file yet.

Q. Look further and you will find it. A. Yes, it would appear from this that we did not know of the Herold Store in Milwaukee being the same organization and after this they were red carded in December, 1935, the earlier stores, then in February, 1936, we found out that they were the same organization and that Mr. Lord was the manager and specifically for that store he refused to remove any goods from sale below \$10.75, so they were red carded apparently, although it does not show that here in the record.

12572

Q. Do you have any record at all showing that they were red carded on the 19th of February? A. Well, I am sorry, but it does not seem to show exactly. The card is not here, but the authorization of the board of governors is here, I have a copy of it.

Q. The dress which was called to the attention of Herold's, and on which they would not co-operate, was the \$6.75 wholesale dress, was it not? A. Yes, it was a registration—no, no, the original was \$10.75 and the copy was \$6.75, that is correct. You see, you pointed out the price of the copy. This store, as I stated before, signed an original declaration in June—July, 1936, and we at that time had taken in a number of the \$10.75 people.

12573

Q. In July? A. Yes, they came in on the first of July. As a matter of fact, that declaration was secured by one of our \$10.75's.

Q. Manufacturers? A. Manufacturers, yes.

Q. Now, directing your attention to Ernst Kern Company, Detroit. A. Just one moment. The company that turned that in was Jomark.

12574

*Albert M. Post—For Commission—Direct.*

Q. Jomark? A. Yes.

Q. Now, directing your attention to Ernst Kern Company, Detroit, I will ask you the same question with regard to that that I have asked you previously with regard to the others. A. Well, the first thing in which I had better cover in this file I think is the history of the cards. The period that Ernst Kern first indicated their policy of co-operation on August 18, 1933.

12575

Q. That is to say, they signed the declaration of co-operation then? A. I know somewhere in these letters it is shown. Let me see if a copy of the declaration is here. I do not think it is. The card indicates that on the 10th of February, 1936, they were red carded. On the 22nd of June, 1936, the red card was replaced with a yellow card. The balance of the file—let me see if I can get it in order; if you will wait just a moment.

Q. Yes. Now, I think I can give you the name of the party you had in mind, Marie Barnes. I will ask you whether or not that is the name of the person who signed the declaration of co-operation? A. These letters indicate that it was signed by Marie Barnes. From the correspondence in the file it appears that in January, 1936, Miss Patterson of Ernst Kern Company refused to remove from sale some copies that had been identified as having been adjudged copies.

12576

Q. Notified by the shopper? A. At the same time identified by the shopper and at the same time the shopper discovered that there was also in stock some copies that had previously been called to the attention of Miss Patterson on which the shopper anyway had believed had been removed from sale, or were to be removed from sale.

Q. Will you give us the wholesale price of the copy that was to be removed? A. Well, I am afraid I cannot—wait a moment—unless it is in the file here.

Q. Is it not on the first report dated January 14? A. What?

Q. Is it not on the first report dated January 14? A. I do not seem to have the report—oh, wait a moment. I am sorry. The last copy was retailing at \$7.95.

Q. That is a \$4.75 dress, is it? A. Well, I can presume that it is a \$4.75 dress although I am not certain. It also appears that the other dresses that were found on sale and that had been called to their attention on December 21, and that were back in stock on January 14—we got in touch with them both by telegram and by getting in touch with Mr. Flannigan of their New York office. Subsequently, they came over, as I recall it—they came over to our office and discussed the matter. As I remember it now, our last communication, there was some question as to whether or not Miss Barnes had ever been authorized by the manager of Ernst Kern Company to sign their declaration—Miss Barnes in 1933 was the buyer.

12578

Q. What did Mr. Flannigan and Miss Patterson tell you on the morning of the 20th with respect to dresses your shopper had asked her to return? A. Well, I see on this memorandum that they took the position that these copies manufactured by the manufacturer who was the Claudette Company had refused to accept the return from them and we showed them by our records that this manufacturer had accepted similar returns from other retailers. When I say "by our records," obviously the only records we have on that matter are the reports from the shoppers in the stores saying that these things have been returned.

Q. Did they say that they had ever returned these garments to Claudette? A. Did they ever say that?

12579

Q. That they had been returned to Claudette? A. They said they had returned them on the 6th of November, 1935 and I do not see how that checks with the other information.

Q. What did they say about the Argyle Dresses? A. You mean on that particular point, and just before I answer that question, it appears from this record that they

12580

*Albert M. Post—For Commission—Direct.*

we were not told to remove these dresses until December 25th and I am not sure about that.

Q. Now, as to the other question. /A. As to the Argyle Dresses, Miss Patterson claimed she only had one dress.

Q. What did she say she did with it? A. She said—and that she would dispose of it immediately either by selling it to some girl in the store or marking it down to a price where it would be disposed of very quickly.

Q. Did she make any excuse for not having it returned? A. Well, she said she considered the dress too old to justify a return. Then, of course, we got to this situation about Miss Barnes—their statement that Miss Barnes had not been authorized to sign the declaration of co-operation, although obviously they had been operating under it for almost three years. At the end of this conference we believed that the matter was satisfactorily adjusted and straightened out and all explained. I believe in order to obviate the question of the proper signature, that it was suggested that they sign a new one, either by Miss Patterson with the approval of Mr. Kern, or by Mr. Kern himself, have him sign. Now, it next appears that early in February, and transactions and meetings that I have referred to were on or about the 20th of January, that we found what appeared to be a copy against in Ernst Kern Store and we took this up with them.

12581

12582

Q. A copy of an original? What original, if so? A. The original was model No. 708 from Charles Lang. In order to know whether the dress is new and adjudged a copy you have to know the manufacturer's name and the model number. The copies' name and model number, of course, you must know in order for the girls to check up with their sketches. Obviously, if the store refuses to tell you who the manufacturer is, what the model number is, and what appears to be a copy is brought to your attention or comes to your attention, you cannot immediately say that this is a copy and has been so adjudged because

you can only say that it comes from John Jones and is No. 100, and that John Jones' No. 100 has been adjudged a copy of an original by a piracy committee. It appears from the report that Mrs. Brydell, who apparently is assistant to Miss Patterson, refused to identify the dress as being a copy or give any information on it, stating that Miss Patterson had instructed her not to give out any information.

Q. And you could not find Miss Patterson? A. We could not locate Miss Patterson that day.

Q. What do the records show you did thereupon, upon receiving that report? A. After this report was sent in by our shopper and received by us, I do not know what date, but under date of February 7, 1936, we wrote to the Ernst Kern store.

12584

Mr. Haycraft: I ask this document be marked Commission's Exhibit 1010 for Identification.

(The letter was marked for identification Commission's Exhibit 1010.)

*By Mr. Haycraft.*

Q. Showing you Commission's Exhibit 1010 for Identification, is that a copy of a letter that you wrote the company on that date? A. Yes, sir.

Mr. Haycraft: I offer it in evidence.

Mr. Albert: No objection.

12585

Examiner Averill: Gentlemen, the paper heretofore marked Commission's Exhibit 1010 for Identification, will be received in evidence and marked Commission's Exhibit 1010, being a letter dated February 7, 1936, to Ernst Kern Company, Detroit, Mich., from Albert M. Post, executive director, Fashion Originators Guild of America, Inc.

12586

*Albert M. Post—For Commission—Direct.*

(The letter heretofore marked for identification Commission's Exhibit 1010, was marked as an exhibit and received in evidence.)

The Witness: The file shows that after the writing of that letter there was undoubtedly some conferences with Mr. Flannigan, and I believe he sent us a copy of the letter, of the original letter that he had received from Miss Patterson.

*By Mr. Haycraft.*

12587

Q. What is the gist of her claim with respect to the Lang dress? A. Well, Miss Patterson apparently sets herself up as being a piracy committee of one member, and she states that this is not a copy because the sleeve is pleated and also the bottom is pleated.

Q. Whereas the Lang dress had a pleated collar? A. Yes, that is my recollection. My recollection is that she was shown the Lang dress, or at least it is quite obvious even by her own letter that she knew this dress was, with the exception of a few details which she mentioned, a copy of the Charles Lang dress.

Q. At any rate, the upshot of the whole matter was that she was rather upset about the whole thing, is that not true? A. I think that that was one of the least important things that happened in connection with this transaction.

12588

Q. Did you get further report from your shopper on that transaction? A. Yes. Apparently Miss Patterson called our shopper after hearing from Mr. Flannigan of their New York office. Our shopper wrote us that Miss Patterson had informed her that she was always willing to co-operate and did not understand why Miss Miller—Miss Miller was our shopper—had sent in a report to the contrary. Of course, Miss Miller had never stated that she was not willing to co-operate, but she had merely reported that she had found a copy there and the transaction in connection with it.

Q. Will you refer to Miss Miller's report and tell us what she said about this being a copy as is shown thereon?

Mr. Albert: Your Honor, does your Honor want to hear what Miss Miller said that Miss Patterson stated?

Mr. Haycraft: What is that?

Mr. Albert: Does your Honor want to hear what Miss Miller said that Miss Patterson said?

Examiner Averill: What is that about?

The Witness: This is about Miss Patterson.

*By Mr. Haycraft.*

Q. Just read what it says there. A. "Miss Patterson states that the dress was not a copy."

Q. Proceed. A. Mr. Haycraft, may I interrupt the resumption of the reading of this statement with the statement that the next sentence which I shall read is our shopper's statement rather than Miss Patterson's, and the next sentence reads: "It may not be as there are—and there are a couple of minor changes about my instructions that neither the buyer nor the shopper have the authority to decide that a dress is a copy, it is either up to a Guild decision by its committee or a local piracy committee to determine that. Now, the next thing that happened on this transaction was the letter which I received from Mr. Flannigan. However, before we come to that letter, that one seems to be a little out of order, there is a letter on the last of February, still on this same subject of this Ernst Kern transaction, in which I pointed out to Miss Patterson what the situation was on their declaration, and of course our position was that in view of the fact that they had suggested that Miss Barnes was not authorized to sign, that we felt that in view of that information that we wanted no question about the future and we were asking for a new declaration. Well, I guess, to summarize this

12592

*Albert M. Post—For Commission—Direct.*

correspondence, Mr. Haycraft, I can say that after no definite word being received, or could be secured from Ernst Kern regarding their policy with reference to anti-piracy and so forth, that a red card was sent to our members as I have already testified.

Q. I would like to make this request of you that if you can locate any correspondence that you may have, or a copy of their declaration that they finally signed in June, will you do so? A. I can certainly get that, although my recollection is that there was no correspondence, that Miss Patterson and a few other people came in to see us, although frankly I cannot say. I will look it up.

12593

Q. And get the form of the declaration that they did sign? A. Yes.

Q. Now, we will take up the J. L. Hudson matter in Detroit, Mich. I will ask you to give us the dates of the red carding.

Mr. Haycraft: I will ask—

Mr. Albert: Mr. Haycraft, am I to understand that these cases are supposed to have been taken up at random?

Mr. Haycraft: Yes.

Mr. Albert: In the first place, J. L. Hudson & Company have already testified in Detroit for over a week, or about a week. Do you want Mr. Post's version of the transaction of what took place there, or what?

12594

Mr. Haycraft: No, I am asking what the records show.

A. On May 5, 1935, this card says, I know it is 1933, J. L. Hudson—our members were notified that J. L. Hudson & Company were co-operating in their better departments. I do know that the declaration was signed was one that specified for the basement also, and was the no-

*Albert M. Post—For Commission—Direct.*

12595

tice for the basement, and why the notice for the basement is dated June 21, 1933, I do not myself understand at the moment, but that is the way the record appears in this folder. In other words, there seems to be two notifications sent to our members, although, in fact, there was but one declaration. The red card was dated the 13th day of February, 1936. It states "definitely refuses to cooperate."

Mr. Haycraft: I ask to have the following documents marked Commission's Exhibits 1011-A to 1011-G for identification.

(The documents were marked for identification Commission's Exhibits 1011-A to 1011-G, both inclusive.)

12596

*By Mr. Haycraft.*

Q. I show you Commission's Exhibits 1011-A to 1011-G, both inclusive, for identification and I will ask you whether or not this file consists of the reports and memoranda taken from your files relating to the red carding of the J. L. Hudson Company? A. Well, the first part of your question is right, and the second part is also correct, although I feel that I am quite sure that it is clear to everyone that the red carding of the J. L. Hudson Company was not based upon the particular transactions herein referred to. This is the last transaction and for that reason was put in this folder, but as you can and do know in this case that J. L. Hudson Company's red carding is clearly one of policy and the basis for our action in their case was because of their policy.

12697

Mr. Haycraft: Mr. Examiner, in offering this file in evidence I wish to make the observation in the record that this file should be taken into consideration with the reading by whoever reads the rec-

12598

*Albert M. Post—For Commission—Direct:*

ord in connection with Commission's Exhibits 496, 499, 500, 501, 502 and 503 already in evidence.

Examiner Averill: That is, it does not contain those?

(The documents heretofore marked for identification Commission's Exhibits 1011-A to 1011-G, both inclusive, were marked as exhibits and received in evidence.)

*By Mr. Haycraft:*

Q. I now direct your attention to R. H. White & Company, Boston, Mass. and ask you the same question that I have asked you heretofore, asking you to confine your answer to the red card that you have there. A. The record of the cards indicates that our members were notified regarding R. H. White & Company's policy on July 5, 1933 and were notified as being red carded on February 10, 1936. In between those dates there is quite a story.

Q. There is some correspondence? A. Yes.

Mr. Haycraft: I ask to have these documents marked for identification.

(The documents were marked for identification Commission's Exhibits 1012-A to 1012-I, both inclusive.)

12600 *By Mr. Haycraft:*

Q. I show you Commission's Exhibits 1012-A to I, both inclusive and ask you whether you identify that as the file of correspondence and reports, memoranda, and so forth, taken from your files relating to the red carding of R. H. White & Company? A. Yes, I believe, these are copies of reports which we supplied you with relating to the red carding of R. H. White & Company.

*Albert M. Post—For Commission—Direct.*

12601

Mr. Haycraft: I offer them in evidence.

(The documents heretofore marked for identification Commission's Exhibits 1012-A to 1012-I were marked as exhibits and received in evidence.)

*By Mr. Haycraft.*

Q. I now direct your attention to the Boston Store of Milwaukee, Wis., otherwise known as Herfeld-Phillips Company store. What do your records say with respect to the red carding of that store? A. The record indicates that they were red carded on the 18th day of February, 1936. This folder further shows that while we had some violations that the probable determining factor at that time was the notice that we received in their name from Col. Phillip J. Reilly of the A.M.C., stating that in the future the policy of their stores would not be to protect our members' copies except above a certain price line.

12602

Q. You refer now to Respondents' Exhibits 38 and 37?

A. Are those the right numbers?

Mr. Keller: Yes.

*By Mr. Haycraft.*

Q. The Reilly letter? A. The Reilly letter, and in the case of the Boston Store, we sent them a telegram, and the one which is in evidence which is—

Mr. Keller: Respondents' Exhibit 38.

12603

A. —Respondents' Exhibit 38, asking whether Col. Reilly was speaking for them, and when we did not receive a reply, the entire matter was submitted to the membership meeting that was held on or about that time and a red card was voted.

Q. On February 17, 1936?

12604

*Albert M. Post—For Commission—Direct.*

Mr. Keller: The letter was Respondents' Exhibit 37 and the telegram was Respondents' Exhibit 38.

*By Mr. Haycraft.*

Q. Respondents' Exhibits 37 and 38? A. Yes.

Q. And Mr. Rosenthal mentioned it in his testimony?

A. Yes.

Mr. Haycraft: I ask to have these documents marked Commission's Exhibits 1013-A to 1013-G for Identification.

12605

(The documents were marked for identification Commission's Exhibits 1013-A to 1013-G, both inclusive.)

*By Mr. Haycraft.*

Q. I show you Commission's Exhibits 1013-A to G for Identification and ask you if you can identify that as a file of reports and correspondence and memoranda taken from your records relating to the red carding of the Boston Store, Milwaukee, Wis.? A. Well, those are some of the records except that I would say that the reason the store was red carded was because, as we have previously testified, that we were placed on notice by Col. Reilly, but some of these transactions that appear in this group of correspondence go back and give a sort of a background to part of this matter. They were all part of the situation in that they indicate the store policy that indicated to us that Mr. Reilly was correctly speaking for the store, but I would like to distinguish between the red carding of the store because of this transaction here because I do not believe that is correct.

12606

Q. If you will just answer my question I do not believe you will have any trouble. A. Well, as I get it—

*Albert M. Post—For Commission—Direct.*

12607

Mr. Albert: That is why he is answering it that way.

Mr. Haycraft: I ask that the question be read to the witness.

Q. (Question read.) A. Well, relating to the red carding of the Boston Store in Milwaukee. Now, that infers to me that these are the transactions that caused it and that is not the fact.

Mr. Albert: The only thing relating to the red carding is the Reilly letter.

Examiner Averill: I think that the explanation that the witness gives supplies fully the information as to what he means. It prevents any possible misapprehension of what the witness meant when he answered. 12608

by Mr. Haycraft.

Q. You do identify these? A. Yes, I do; yes, sir.

Mr. Haycraft: I offer these in evidence.

(The documents heretofore marked for identification Commission's Exhibits 1013-A to 1013-G were marked as exhibits and received in evidence.)

by Mr. Haycraft.

Q. I now direct your attention to the Dayton Store, Minneapolis, Minn. A. Yes. 12609

Q. I will ask you the same question with reference to that that I did with reference to the others. A. The time the Dayton Store was the 18th February, 1938, and the situation is just about the same as I testified to just a moment ago regarding the Boston Store, indicating that this is a particular transaction which is one of those that occurred prior to the notification from Col. Reilly, it may not be identical, but it is in the same category.

12610

*Albert M. Post—For Commission—Direct.*

Mr. Haycraft: I ask to have these documents marked for identification.

(The documents were marked for identification Commission's Exhibits 1014-A to 1014-G, both inclusive.)

*By Mr. Haycraft.*

Q. When does the record show that they first co-operated with the Guild? A. May 20, 1935, although, Mr. Haycraft, I would say—

12611

Q. That is along with the formation of the Minneapolis Guild? A. No, this is the date, I believe, of their own independent recollection. If you will recall the Minneapolis testimony, there was a letter written in 1932. It was the letter written in 1932 saying that these stores wanted to co-operate. Apparently at that time we had no card system but I should say that their stated co-operating started at the very beginning of the Guild.

Q. I call your attention to Commission's Exhibits 1014-A to 1014-G, both inclusive, for Identification and ask you if you identify this as a file of correspondence, reports, memoranda taken from the records of the Guild relating to the transactions prior to the red carding of the Dayton Store? A. Yes. I identify them as copies of correspondence taken from our files and with the same qualifications as I have identified similar ones.

12612

Mr. Haycraft: I offer them in evidence.

(The documents heretofore marked for identification Commission's Exhibits 1014-A to 1014-G, both inclusive, were marked as exhibits and received in evidence.)

(Whereupon, at 4.30 o'clock P. M., December 15, 1936, the hearing in the above-entitled matter was adjourned.)

*Albert M. Post—For Commission—Direct.*

12613

Room 901, 45 Broadway,  
New York, N. Y.,  
December 16, 1936.

Met, pursuant to adjournment, 10 A. M.

Before: EDWARD M. AVERILL, *Examiner.*

(Same Appearances)

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PROCEEDINGS.

Examiner Averill: Proceed.

12614

Mr. Haycraft: Mr. Post, will you resume the stand?

ALBERT M. POST resumed the stand and testified further as follows:

*Direct examination (continued) by Mr. Haycraft.*

Q. Mr. Post, I now call your attention to the Wm. Filene's Sons Company, Boston, Mass., with whom I presume you are familiar. A. I am.

Q. I will ask you what the record shows as to the recording of that concern. A. I suppose I shall have to correct you again on that, Mr. Haycraft. This record, which I suppose is our record, is in no sense a complete record. It shows, by our files, that Wm. Filene's Sons & Company notified us and through us, our members, by the head of their New York office, that they were withdrawing their co-operation in our program and campaign to eliminate style piracy.

12615

Q. What is the date? A. They notified us in a letter, which I believe—

12616

*Albert M. Post—For Commission—Direct.*

Q. What? A. They notified us in a letter signed by Phillip J. Reilly on, I believe, February 15.

Q. Seventeenth? A. Not 17th. After we received the letter——

Q. That is right. A. —we wired——

Q. Is it not on the 14th? A. Yes, our telegram is dated the 14th. I wired Filene's asking whether Mr. Reilly was authorized to speak for them and whether or not that was the position of the store and requested a reply, and then on the 17th they did not reply, and after the meeting of the membership on that evening the red card was authorized and issued on February 18.

12617

Q. I take it that that request did not show that the Wm. Filene's Sons & Company had not been co-operating in the return of garments? A. Well, this, again, this record does not show it, but this method of getting the situation in on the basis of the last transaction does not really show the story.

Q. What was the situation with respect to the red carding of Wm. Filene's Sons & Company? Was it any different from any of the rest of the members of the Associated Merchandising Corporation group, or is it a fact that they had been co-operating up until this time? A. Well, I am afraid, Mr. Haycraft, that you would have to define the word "co-operating."

12618

Q. I mean to the extent of returning dresses that were adjudged copies by the Guild, or by piracy committees, and the returning of such goods to the manufacturers thereof. A. I believe they returned a good many of those that were called to their attention, but they did not return all of them. In some cases they told us that they had returned the dresses and we subsequently found in stock those dresses. In another case we had manufacturers complain that they were returning goods that were not adjudged copies under the claim that the F.O.G.A. had told them that they were copies.

Q. When did these transactions take place? A. All along, they were the subject matter of discussion generally through the entire fall of 1935 and the early part of 1936, although I believe our complete files indicate that there were actual transactions of that kind occasionally ever since we were in a position to know whether the stores co-operated.

Q. Was that because of certain reservations that the Wm. Filene's Sons Company apparently had as to the extent of the co-operation that they were to give? A. No, Mr. Haycraft. If you will recall the Filene declaration of co-operation, they made some reservations regarding determining of copies, and we replied that we could not accept them and they, in turn, replied accepting our positions. There was no reservation or special agreements with Filene. Naturally, there was a program that had to be evolved, but it would be a big stretch of the imagination to say that any difficulties with Wm. Filene Sons & Company, Boston, about not co-operating, or involving the return of merchandise that they had agreed to return, and even subsequently put back on sale, had anything to do with even their claimed reservations or the other situations where they returned non-copies and told the manufacturers that they—that we had directed them to return them.

12620

Q. Were any of these transactions that you referred to during the month of January, 1936? A. Well, in the absence of the complete file I would not want to say. I do not recall.

12621

Q. I would like to have you, or your assistants, make a search and see whether or not there are any reports of failure or refusal to co-operate made by your shopper or in your office memoranda in any one respect, with respect to piracy committee reports relating to the Wm. Filene Son's Company during the months of January and February, 1936. A. I will be glad to do it if you want it on that limited basis.

12622

*Albert M. Post—For Commission—Direct.*

Q. You understand what I want? A. Yes.

Q. I call your attention to the firm of John Shillito Company, Cincinnati, Ohio and ask what your records show with respect to the red carding of that concern? A. Well, the records show that John Shillito Company, Cincinnati, is one of the stores in this A.M.C., and under date of February 14 in a letter from the head of their buying office and the head of the A.M.C., Mr. Reilly notified the F.O.G.A. and through them its members that they would no longer protect merchandise against style piracy. This occurred in 1936.

Examiner Averill: Go ahead.

12623

A. Except that having received this letter from Mr. Reilly, we wired the store and asked whether this letter was authorized by them.

Examiner Averill: You stated that already.

The Witness: No, I stated that on the previous case, but not of John Shillito Company, Cincinnati, Ohio. Having received no reply the matter was submitted to our membership at our meeting on February 17 and a red card was voted for the John Shillito Company that evening and sent out on the 18th.

Examiner Averill: Of what year?

12624

The Witness: Of 1936. I am sorry to seem somewhat repetitious, but each one of these is an entire situation in itself, although they are quite similar.

Examiner Averill: All right. Now, answer the question about the red carding, please.

The Witness: What is that question?

Q. (Question read.) A. On February 18, 1936, it says "Refusal to co-operate." It also says, "Take out the yellow card, insert red card."

*By Mr. Haycraft.*

Q. Do your files contain any correspondence showing—  
strike that out. Do your files contain any correspondence  
such as reports or memoranda or correspondence relating  
to the instances where the John Shillito Company had  
declined to return garments to manufacturers; that is,  
garments that had been adjudged copies of Guild merchan-  
dise?

Mr. Albert: If the question is asked do the files  
which the witness was subpoenaed to produce at  
this time, that is objected to on the ground that the  
witness was not required to produce such, but, if  
you only—the witness was only required to pro-  
duce such records as affected the red carding, but  
if Mr. Haycraft is merely asking the general ques-  
tion on that subject matter, I have no objection.

12626

Examiner Averill: Read the question.

(Question read.)

Mr. Haycraft: I would like to amend that—  
during the year 1936, prior to the red carding.

Examiner Averill: Do you mean all of his files,  
or the files that the witness has right now.

Mr. Haycraft: All of his files, or anything that  
he has before him now.

A. Well, if you mean all of our files, I feel certain that  
they do, although when you specify the months preceding  
the red carding, I cannot tell you whether that is so or  
not at this time.

12627

*By Mr. Haycraft.*

Q. Then I am going to request that you ascertain  
through your assistants whether or not there was such  
correspondence or memoranda in the months of January  
and February, 1936, prior to the red carding with respect

12628

*Albert M. Post—For Commission—Direct.*

to the John Shillito Company. A. Do I understand your request to mean merely what you said, their refusal to remove goods from sale, or the further situation where they agreed to remove goods from sale and subsequently we found that they did?

Q. Any reports that you have with respect to either one of the two situations that you referred to. A. I think I understand that.

Q. Now, when you referred to the Reilly letter a moment ago, when you referred to it a moment ago, and also to the former A.M.C. stores and I objected to the characterization of it; I ask you whether you referred to Commission's Exhibit 924 in evidence? A. Well, this is the letter I referred to. This is not the complete story either.

12629.

Q. I am asking you whether this is the letter you referred to? A. This is the letter I referred to—just a moment—yes, this is the letter I referred to.

Examiner Averill: What is the exhibit number?

Mr. Haycraft: This is also Respondents' Exhibit 37, I think.

The Witness: Respondents' Exhibit 37, yes.

*By Mr. Haycraft.*

Q. Can you now direct your attention to the F. & R. Lazarus Company, Columbus, Ohio, and I will ask you whether the situation with respect to the F. & R. Lazarus Company is the same as exists with respect to John Shillito Company? A. Well, if you are speaking specifically of the issuance of the red card, the answer is yes.

12630

Q. Also as to the correspondence with Mr. Reilly. A. That is correct as to that store.

Q. And the lack of reply on the part of the Lazarus store to your telegram of February 15. A. Yes.

Q. Which is now in evidence as Respondents' Exhibit No. 38? A. Yes.

Q. What is the situation with respect to reports in your files as to instances where the F. & R. Lazarus Company has not co-operated in the return of garments? A. Well, I could not trust my memory on that.

Q. Well, I will make the same request for the F. & R. Lazarus Company, Columbus, Ohio, that I have already made for the John Shillito Company, Cincinnati, Ohio. A. Yes.

The Witness: Herbert, will you add that to the other list?

Mr. Keller: I now have three.

The Witness: No, you have six.

Mr. Keller: I only seem to have three.

12632

Examiner Averill: Just a moment and I will read them to you.

Mr. Keller: I think I have them here.

Mr. Albert: I think we have a list of them here, your Honor.

Examiner Averill: I have them here and I can read them to you, if you wish.

The Witness: Mr. Keller, if you will listen the Examiner will give you the list that he has.

Mr. Keller: I have now located them, I have all six of them now.

The Witness: This is not going on the record, I suppose.

Mr. Haycraft: Oh, yes, I think it should be there to show that it is clearly understood.

12633

Mr. Albert: It does not show much of anything, but I have no objection.

*By Mr. Haycraft.*

Q. I now call your attention to the firm of William Taylor & Sons. A. Yes.

Q. I will ask you whether or not this firm is in the same category as the John Shillito Company and the F. & R.

12634

*Albert M. Post—For Commission—Direct.*

Lazarus Company, in your records with respect to the red carding? A. Well, if you mean the issuance of the red card, yes, the record is the same, not if you mean with respect to our records that we have.

Q. Yes, as to the red carding. A. In so far as the issuance of the red card, yes.

Q. What did you produce here pursuant to the subpoena relating to the William Taylor & Sons Company?

A. The specific request made for this selected list of the files immediately preceding the red carding—that is, I believe the subpoena read the correspondence regarding the red carding.

12635

Q. Do you have that subpoena with you? A. No, I do not have it.

Q. To refresh your recollection, did it not call for all correspondence, memoranda, and reports in your files relating to the red carding of the retail dealers that had been named? A. Is your question—

Mr. Albert: That is objected, if your Honor please. Let Mr. Haycraft ask him for anything that he has produced and not ask him what the witness thinks the subpoena contains because that is a legal conclusion. They seem to be getting now into an argument as to the language of the subpoena.

Examiner Averill: Read the question.

(Question read.)

12636

Examiner Averill: Off the record.

(There was a discussion off the record.)

Mr. Albert: I withdraw the question. Let us see where Mr. Haycraft is going after that question.

Examiner Averill: I am not able to attempt to foreordain where anybody is going, gentlemen. Read the question to the witness and let him answer it if he can.

(Question read.)

A. The thing I want to say is that after we received the subpoena, I naturally made a study of it, and I inquired from Mr. Haycraft just exactly what he wanted, because my literal interpretation—perhaps not a legal—but a literal interpretation of the subpoena, it meant all the records of any transaction that was a part of the background of the set-up of this situation. Mr. Haycraft specifically told me that all he wanted were the things immediately preceding it, and he said, I think, the calendar month of January, 1936. Subsequently, and when Mr. Martin and Mr. Seidman and he came to our office and went through these records—that was last week, I cannot remember the day—I inquired again about the matter because I did not make a note of it, but it was last week, but I did enquire into the matter because I felt that frankly this was an attempt to limit these records to that period of one month of January, when all of these conferences and discussions were going on, and certainly, in my opinion, it does not give the picture as it took place by any means whatever.

12638

*By Mr. Haycraft.*

Q. In other words, you produced what you thought I desired? A. Yes, I did.

Examiner Averill: In other words, as you have just told counsel, you produced what you thought he wished you to produce.

The Witness: What he told me, or what my understanding of what he told me was.

12639

Examiner Averill: Proceed.

*By Mr. Haycraft.*

Q. Does your record contain any correspondence or reports of shoppers relating to the instances where the Wm. Taylor Company had not co-operated with the Guild by returning garments adjudged to be copies during the year

12640

*Albert M. Post—For Commission—Direct.*

1936, prior to February 18? A. I cannot say, but you are speaking of the month of January, 1936, apparently?

Q. Yes, January, and the first two weeks of February.  
A. I cannot say as to that.

12341

Q. Mr. Post, I call your attention to the Stix, Baer & Fuller concern and ask you if you have any record of the red carding of that organization? A. Well, this file indicates that a red card was issued on the 18th day of February, 1936, and the same general situation as previously described pertaining to some of the A.M.C. stores—the notification by Mr. Reilly and also the transaction of November 8, 1935. It contains a report of our shopper as of that date and a letter from our shopper in St. Louis as of that date, and what appears to be a copy of our reply to that shopper's letter of November 18, under date of November 19, 1935.

Mr. Haycraft: I ask this be marked for identification Commission's Exhibits 1015-A to D.

(The documents were marked for identification Commission's Exhibits 1015-A to 1015-D, both inclusive.)

*By Mr. Haycraft.*

12642

Q. I will ask you whether or not you identify Commission's Exhibits 1015-A to D as correspondence to which you have just referred to in your testimony as copies of that correspondence? A. Yes, these are copies of the matters that I just referred to.

Mr. Haycraft: I offer these in evidence.

Mr. Albert: No objection.

(The documents heretofore marked for identification Commission's Exhibits 1015-A to 1015-D, both inclusive, were marked as exhibits and received in evidence.)

## AFTERNOON SESSION.

Examiner Averill: Gentlemen, you may proceed.

ALBERT M. POST resumed the stand and testified further as follows:

*Direct examination (continued) by Mr. Haycraft.*

Q. Mr. Post, while you were on the witness stand yesterday and were testifying with respect to Hertz-Lang, you stated you did not believe that the file of correspondence that you had turned over to counsel for the Commission was complete, and that you thought there was other correspondence with that firm? A. Yes. 12644

Q. At my request have you made a further search to see whether or not there was further correspondence? A. I had a search made, yes.

Q. What did you find? A. I did not find any additional correspondence.

Q. Yesterday, while you were on the witness stand, you were questioned with respect to the firm of McGlenn Frocks, Minneapolis, Minn. A. Yes.

Q. At that time, I requested you to see if you could find a copy of their recent declaration of co-operation which was signed some time in 1936. A. Yes.

(The document heretofore marked for identification Commission's Exhibit 1016 was marked as an exhibit and received in evidence.) 12645

*By Mr. Haycraft:*

Q. You spoke to me with respect to the copies of that? A. I did.

Q. I am referring now to Carolellen's, Inc. A. Yes.

Q. And I believe you said you would check into that and see if you could find any further matter in that regard? A. Yes.

12646

*Albert M. Post—For Commission—Direct.*

Q. What did you find with respect to that? A. I found the declaration of co-operation and I have brought down here a photostatic copy thereof.

(The document heretofore marked for identification Commission's Exhibit 1017 was marked as an exhibit and received in evidence.)

*By Mr. Haycraft.*

12647

Q. This morning I requested you to have a search made among your files to see whether or not you had any additional file with respect to F. & R. Lazarus Company as to the instances that that concern had not co-operated with the Guild in its program. A. Yes.

Q. Have you done so? A. Yes. I have had such a search made.

Q. With what result? A. The file has been produced. While the file indicates that the basic situation and the red carding is the same as the other A.M.C. stores that I have mentioned, and that we received the telegram from these people.

12648

Q. I think you have already testified to that. A. I was not sure. And then in addition it appears from the file that as late as November last, in fact November 11, we were writing to their merchandise manager asking them for suggestions for a shopper, so it appears that we did not have any shopper in Columbus, Ohio, during most of the fall season of 1935, and I am not sure that we had one in January, 1936, so that the absence of greater information on the F. & R. Lazarus Brothers & Company might be accounted for in part on account of the fact that there was no shopper in Columbus, Ohio, at that time.

Q. Do your files show that there was any instances where you had called the attention of the F. & R. Lazarus Brothers & Company to the existence of a copy? A. Yes.

Q. In their stock? A. Yes. There is one, Mr. Haycraft; such instance that you refer to.

Q. What reply, if any, did they make to the matter when it was called to their attention? A. Under the method that we used, when we have no shopper, apparently on October 23 a sketch, we sent them a sketch of the dress that had been copied and requested that if they had any copy to remove it from sale. On October 28 they wrote back and said that they had nothing like it in stock but in that though they said they had nothing similar to that in stock they did mention another style which they say is the "nearest approach" to this style. That should be in quotation marks. Apparently, on November 1 we advised the store who had originally the complaint of what their reply had been with the suggestion that they send their own shopper for their store, to send their shopper in to satisfy themselves as to the correctness of the F. & R. Lazarus Company reply.

12650

Q. That is the only instance you have in your records of that kind? A. Yes; that is true. That is correct. That is all I have here.

Q. I now direct your attention to H. C. Capwell Company, and ask you what your records show with respect as to the red carding of that store, first, and, secondly, as to the co-operation of the store with the Guild plan? A. The H. C. Capwell Company being one of the A.M.C. stores did not make any reply to our wire and was red carded on February 18, 1936. As a matter of situation I have previously described in more detail. The files show no shopping reports because we did not have a shopper in Oakland, California.

12651

Q. Oakland, California? A. Yes. But the file shows some correspondence and evidence of telephone conversations regarding the piracy matters. There was a later report of the fall season of 1935 as well as some correspondence regarding deliveries subsequent to the red carding.

12652

*Albert M. Post—For Commission—Direct.*

Q. Was this concern represented by Mr. Bergdahl in this market with respect to the Guild program? A. Yes. They were. Not merely as to the Guild program, because the Guild's contact with this store was largely through Mr. Bergdahl, but he is their general buying representative, and he apparently during the course of this, file brought to our attention some kind of a transaction involving piracy.

Q. Was there an objection on the part of the H. C. Capwell store to putting the warranty stamp on all orders in the latter part of 1935 before—or the latter part of 1935 in October? A. May I take the time to read this correspondence?

12653

Examiner Averill: You will have to, sir, if it is necessary in order for you to answer.

(The witness examined the document for several minutes.)

The Witness: May I have the question again?  
(Question read.)

A. After reading this correspondence, Mr. Haycraft, it is recalled to my memory just what these transactions were, and if your question is intended to have me tell the background of this correspondence I will be glad to answer. I do not want to volunteer it. What I mean to say is, I do not wish to go beyond your question.

12654

Examiner Averill: Let the question be read.  
(Question read.)

A. Answering that question again, I would say there was some misunderstanding regarding that that I believe could be called an objection.

*By Mr. Haycraft.*

Q. You addressed the letter to the H. C. Capwell Company store explaining your position at that time? A. Yes.

Q. Or before? A. Yes.

(The documents heretofore marked for identification Commission's Exhibits 1018-A to 1018-E were marked for identification and received in evidence.)

*By Mr. Haycraft.*

Q. Mr. Post, subsequent to October, 1935, did the Capwell Company put a warranty stamp on all of its orders?

A. I could not answer that.

12656

Q. You do not know? A. I do not know.

Q. Did you get any information from Mr. Bergdahl with respect to whether or not they would put their warranty stamp on all orders subsequent to that date? A. We got information from Mr. Bergdahl that on all the orders that he placed for the H. C. Capwell Company, that they were included.

Q. Now, I call your attention to the Reich-Cumler Company, Dayton, Ohio. A. Yes, sir.

Q. I will ask you what your records show with respect to the red carding of that store. A. The record shows that they were red carded on February 18, 1936, subsequent to the membership meeting, and the writing of various letters and telegrams already referred to. The receipt of the letter and the submission of the telegram already referred to—I should say—and no answer.

12657

Q. Have you made a search of your records to see whether or not there was any other correspondence of shoppers, or shoppers' reports, or correspondence of any kind relating to the co-operation of that concern with the program of the Guild? A. I did.

Q. What did you find in that regard? A. I found this regular folder, this complete folder.

12658

*Albert M. Post—For Commission—Direct.*

Q. Consulting that folder, will you testify as to what the records show as to the Reich-Cumler in connection with its co-operating with the Guild? A. First as to shopper's report, there are no reports regarding the Reich-Cumler Company because we have never had a shopper in Dayton, Ohio, which is the city in which Reich-Cumler Company is located. There is some correspondence in that file subsequent to the red carding, but as I understand your question you asked prior.

12659

Q. Before, that is right. A. Well, there seems to be a transaction around the middle of or during February, 1936, that is similar to the one I just described with the F. & R. Lazarus & Company where, because of the absence of a shopper, we did send to the Reich-Cumler Company on January 4, a sketch of a dress alleged to be a copy and requested them to remove it from sale if they had such a copy on sale. It appears that on January 15 they acknowledged having received such a copy but they do not state that they have removed it from sale. They merely state that they had such a dress and told us who it came from.

12660

Q. They did not say anything about whether they sold it or not, sold them all out? A. Yes, yes, they say they have no more in stock at the time, on the 15th. That is in reply to a letter of January 4—which we acknowledged, their last letter. Wait a minute, now. That appears to be one transaction on which we had no correspondence with the Reich-Cumler Company regarding piracy—the only one, I mean. That is the only one in which we had any correspondence with them regarding piracy.

(The documents heretofore marked for identification Commissions Exhibits 1019-A, 1019-B and 1019-C were marked as exhibits and received in evidence.)

*Albert M. Post—For Commission—Direct.*

12661

(The documents heretofore marked for identification Commission's Exhibits 1020-A to 1020-E, both inclusive, were marked as exhibits and received in evidence.)

(The documents heretofore marked for identification Commission's Exhibits 1021-A to 1021-I, both inclusive, were marked as exhibits and received in evidence.)

(The documents heretofore marked for identification Commission's Exhibits 1022-A to 1022-L were marked as exhibits and received in evidence.)

(The documents heretofore marked for identification Commission's Exhibits 1023-A to 1023-V, both inclusive, were marked as exhibits and received in evidence.)

12662

(The documents heretofore marked for identification Commission's Exhibits 1024-A to 1024-R, both inclusive, were marked as exhibits and received in evidence.)

(Whereupon at 4:30 o'clock P. M., December 16, 1936, the hearing in the above-entitled matter was adjourned.)

12663

12664

Albert M. Post—For Commission—Direct.

Room 901, 45 Broadway,  
New York, N. Y.,  
December 17, 1936.

Met, pursuant to adjournment, 10 A. M.

Before: EDWARD M. AVERILL, *Examiner*

(Same Appearances.)

PROCEEDINGS.

Examiner Averill: Gentlemen, you may come to order. Mr. Haycraft, you may proceed.

12665

ALBERT M. POST resumed the stand and testified further as follows:

*Direct examination (continued) by Mr. Haycraft.*

Q. Mr. Post, did you keep any record, or does your office keep any record of the number of registrations of garments made by members of the Guild in the past year? A. Well, we have a record. I do not know as it has been summarized recently, but, of course, there is a record kept of all registrations.

Q. How often do you summarize it? A. My recollection is that we did it just once.

12666

Q. When? A. At the time of the Filene litigation.

Q. What did you summarize at that time? A. We summarized the number of registrations that we had in the past season.

Q. Was that for certain months of the year, or what was it? A. No, it was for six months.

Q. Did you keep monthly records of the registrations, or registration summaries? A. The registrations are all by serial number, and I suppose that we keep records and

kept records in the past. We did not have any occasion to summarize any of the registrations except at the time of the Filene registration summarization. At that time we wanted to know the particular point of what we had, so we took the numbers and the date and added them up for the six months. I believe I testified as to the exact number of registrations for the six months, and then estimated what they would be for possibly a year. At least that is my recollection of it. We have a record in the office, because each registration is numbered, so it would be a very simple thing to see what the situation is.

Q. For instance, could you get the number of registrations for the year 1933 and the year 1934 and the year 1935? A. I have not got it yet.

12668

Q. Do you know what the total number of registrations at the end of the years is? A. Well, by the method I have just described, we do have the opportunity to learn that, and we had, as I recall, the registrations for the spring season of 1935, let me see if I am right about that—no, for the fall season of 1935, because the litigation was in March, 1936. So we have factual knowledge of the fall season of 1935, and we estimated by that the number of registrations for 1936. As a matter of fact, we offered no specific figures for the year 1936, or any other year, but just testified as to what that had been for the fall season of 1935, and estimated on that basis that they——

Q. Have you not from time to time made public announcements at meetings, or in the "Women's Wear," as to the number of registrations that were issued, possibly, for the past three months, or for the past six months? A. Well, possibly now that you ask the question I do recall that we have at some time or another—I think that either Mr. Golby or Mr. Goldston in the piracy end, possibly, yes, but there is no regular capitulation that is gotten out each month or each season. I remember once that I perhaps did see a report that we got up for the benefit of the Associated

12669

12670

*Albert M. Post—For Commission—Direct.*

Buying Offices to indicate just how many copies there were in proportion to the total number of registrations. That was based on the same figures of approximately 20,000 registrations for the six months' period.

Q. Was that your estimate of that, or was it factual?

A. That was factual. That was given in the Filene suit, and as I recall it we said that we had approximately 21,000, or 20,600, and something, as I remember the figures in question, for the six months period of time.

Q. That would include the period of time that the \$10.75, the \$8.75, the \$7.75, and \$6.75 affiliates were affiliated with the Guild? A. It would include the time that the \$10.75 were in, and as to the \$6.75, \$7.75, and \$8.75 group, they came in in November sometime, as I recall it. I am testifying on those figures merely by memory. I believe that we do carry the figures for the fall of 1935. If this is the desired answer, and if my recollection of those figures is correct, then the answer I gave you to that question is correct. In any event, I believe it is so. It seems to me that there were 21,000 registrations for the fall season of 1935, and there were 416 of those dresses that had been copied, or something like that.

12671

Q. That is, 416 numbers that had been copied? A. Yes.

Q. Of those that had been copied, you had no knowledge of how much had been copied? A. How many garments, you mean?

12672

Q. Yes. A. No, I have no knowledge of that. I just know something about the number of styles. You start in with approximately 21,000 styles, and of those 416 were copied. When I say "416," that means the original styles. Those 416 copies might be, in fact, 1,000 styles, because the same styles might have been copied by more than one manufacturer.

Q. In other words, those were extremely popular or "hot" numbers that are copied as a rule? A. I would not say that at all.

*Albert M. Post—For Commission—Direct.*

12673

Q. You would not say that?

Mr. Feldman: Why was it that you said that?

The Witness: As a matter of fact, speaking as a retailer, and I am after all essentially a retailer by way of experience, although of course I have a knowledge of this other end of it; too, I can testify it is just the reverse.

by Mr. Haycraft.

Q. What is it? A. Dresses are frequently copied for no other reason than the original came from a well known maker.

Q. How much of a task would it be to prepare yourself to testify as to the number of registrations for garments in those years—namely, 1933, 1934, and 1935? A. Well, currently, 1935, I believe the figures are available for 1934. Let me put it this way: It is no great task if the figures are available. I am not sure just how well the mechanics of your own office were organized in those years, so I cannot say whether those records were maintained or preserved, and if they were currently maintained, but if this information is available, then it is only a matter of a half hour's work, and I shall be glad to have it done for you if you wish it, and my Counsel consents to it.

Q. Yes, I would. A. The only difficulty that I can see to that would be the question of the years prior to 1935. I do not think we have any record as to how many of the dresses were copied.

Q. My question refers to registrations, not to copies. A. I believe because the registrations are certainly serially numbered, I believe we can tell you from the total number of registrations we have had since the first day we started registering. Whether or not I can tell you how many in each year prior to 1935 I am not certain.

Q. You will make an attempt to look that up? A. I certainly will, yes, if my Counsel agrees to it.

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12676

*Albert M. Post—For Commission—Direct.*

Q. Referring to Commission's Exhibit 52, Mr. Post,

A. Yes.

Q. —reference is made, as you will notice there, to a report of a committee, the findings of a committee with respect to the Myron Herbert-Charles Cooper, Inc., for an alleged violation of the rules of the Guild. A. Yes.

Q. That resulted in a fine of \$1,500. A. Yes.

Q. A copy of that report does not accompany the minutes which we have here. I was wondering whether you could look into that and locate it in the Guild's files. A. My understanding is it was a verbal report.

Q. It says, "Report herewith attached," and it could not be a verbal report.

12677

Mr. Albert: Why not, a verbal report could be either in writing or orally.

A. Where does it say that?

Q. Right in the second paragraph. "The Board of Governors unanimously accepted the finding of the committee and the report herewith attached." A. All right. I have never seen that report myself. I will see if there was such a report.

Mr. Albert: If your Counsel agrees to it.

The Witness: Of course.

*By Mr. Haycraft,*

12678

Q. Was it before your time? A. Yes. But, in going over the records which I have had occasion to do very frequently since all of this litigation has started, I have never seen such a report. It may be somewhere.

Q. Referring to Commission's Exhibit No. 55, which is the minutes of the meeting of the Board of Governors for May 21, 1934. A. Yes.

Mr. Albert: What is the last question and answer?

(Question and answer were read.)

By Mr. Haycraft.

Q. That was before your time. I do not know whether you will be able to answer it or not. As a matter of fact, was the \$1,500 fine collected from Myron Herbert and Charles Cooper, Inc., as referred to and indicated in the last paragraph of those minutes? A. Well, with this exception. The fine was collected and it was divided into \$750 that was voted to be given to charity, where, as a matter of fact, I think we gave about \$2,500 to charity.

Mr. Albert: You should explain that.

The Witness: What I mean by that is, that everybody that has a charity they would like some contribution from the Guild, and they came up and asked us about the money that we had available for that purpose.

12680

By Mr. Haycraft.

Q. Did Kansas City and St. Louis, Mo., take the money and divide the money? A. That I am not certain of. I believe that is correct, but I am not sure whether it was divided between the two cities of Kansas City, Mo., or St. Louis, Mo., and it may be that it simply went to one of them. I do not remember.

Mr. Albert: We will take care of Minneapolis next month.

By Mr. Haycraft.

12681 0

Q. Is this the only fine that has been placed against Myron Herbert-Charles Cooper, Inc., with respect to the violation of the rule, or have they been fined since that time? A. I do not believe they have.

Q. Do you recall the testimony of Mr. Swinney in respect of fining the Myron Herbert-Charles Cooper, Inc.?

A. Yes.

12682

*Albert M. Post—For Commission—Direct.*

Q. Is this the same fine which he has reference to? A. Yes.

Q. It is? A. It is the same one, yes.

Q. I call your attention, now, to Commission's Exhibit No. 58, the minutes of the meeting of the Board of Governors held on the 17th day of September, 1934. A. Yes.

12683

Q. I call your attention to the following language: "Minutes of meeting, Board of Governors, Fashion Originators' Guild held at the office of the Guild, Monday, September 17, 1934, at 12 o'clock. Upon a motion made, seconded, and unanimously carried, the Board of Governors instructed the secretary, after receiving information that J. M. Silverman Dresses, Inc., were registering merchandise wholesaling below \$16.75 in the Guild office, to inform its manufacturer that his continuance to register garments below this price range would cause his immediate expulsion from the Guild." What regulation of the Guild was the manufacturer supposed to be violating in registering merchandise below \$16.75?

Mr. Albert: What is the date?

Mr. Haycraft: September 17, 1934.

12684

A. I had occasion to look that up myself, although I was not with the Guild at the time. Our application forms, as you may remember, indicate the price range at which our members manufacture goods. Now, the background of this J. M. Silverman affair was that they had joined the Guild as a manufacturer of \$16.75 dresses and apparently their registrations were all in the price ranges below that. And at that time the Guild policy was that the members were to register within their own price ranges and not there, shall I say, supplementary price ranges. I, perhaps, can make myself a little clearer by recalling to you that most of these manufacturers that even you have brought to the stand have testified that they supplemented their regular business by an irregular adventure in the off season in the

lower price ranges, and that is what this transaction had to do with. At that time the Board of Governors felt that the members should not register merchandise that is in a price range that is not a part of their regular business. Subsequently, that was changed. That was the situation at that time.

*By Mr. Haycraft.*

Q. What price range do you recall that J. M. Silverman Dresses, Inc., was registering at? A. I believe it was \$10.75, although I am not certain of that.

Q. Were any of your manufacturers at that time registering dresses at \$10.75? A. Yes.

12686

Q. There was some? A. There was some.

Q. What was the objection to allowing one—I withdraw that. What was the reason for allowing one manufacturer to register \$10.75, and not another?

Mr. Albert: May it please the Court, the question has been answered.

The Witness: I have explained it, but I do not object to explaining it again.

*By Mr. Haycraft.*

Q. You said it was. What I am trying to find out now is the reason. The reason back of it. Why did the Guild object to the \$16.75 manufacturers registering \$10.75 garments? A. It is very simple—is there an objection?

12687

Mr. Albert: It has already been answered.

Examiner Averill: Objection overruled, if there is an objection.

Mr. Albert: Exception.

Examiner Averill: Go ahead and explain it, Mr. Post.

12688

*Albert M. Post—For Commission—Direct.*

A. At that time and up to July 1, 1935, we only had regular members. We had no protective affiliates. The regular membership at that time and today starts at \$16.75. The Protective Affiliates—no, I am mistaken about the Protective Affiliates—start at \$12.75 coming up to, at that time—but at that time, to put it this way, they started at \$16.75. The merchandise which was sold at below \$16.75 by members of the Guild at that time came from the sportswear group and the junior group, and the Guild felt that a member, a regular member in our membership—in the Guild membership, that is, was the only one who had a regular line of merchandise which went in along with manufacturers in the Guild at \$16.75 and up; they were the regular members, and that a regular member, therefore, registering goods below that was unnecessarily and unfairly complicating the problems of the Guild. Had he been a junior wear manufacturer, or a sportswear manufacturer where the question was clearly understood, I do not think there would have been any question, but he was not. Our membership at that time was—the regular membership, and there was no affiliate membership at that time—and the regular membership, as distinguished from the sportswear and the junior dresses started at \$16.75 at that time. Perhaps I have made that sentence pretty long from the beginning to the end, and what I mean to say is that the regular membership at that time started at \$16.75 and leaving out the sportswear and the junior dresses.

12689

12690

Q. So at that time there was a registration restriction, or at least there was a restriction upon the regular membership of the dress manufacturers as to the members who might register with the Guild, and what price lines they might register with the Guild? A. There was no restriction as to what members might register with the Guild because they all had to, but we did have something to say about what prices, lines, but I do not accept your word as to "restriction." If you mean we did not have any below \$16.75, I will agree to that.

Q. Here was a man attempting to register merchandise at below \$16.75; is that correct? A. If that is what you call a restriction, all right, but I said I did not agree with it, but I will agree to what happened, and it can be interpreted in any way it is desired.

Q. Is that the fact that the rules did prohibit a gentleman, a regular manufacturer, that is, of \$16.75 merchandise, from registering designs on \$10.75 merchandise? A. What do you mean by that?

Q. Is it a fact that the rules did forbid a concern that regularly manufactured \$16.75 merchandise from manufacturing and registering designs in the \$10.75 merchandise? A. They could manufacture anything they wanted to. However, well, I just testified as to the facts decidedly to the reverse, but if you want to put it that way, that is all right. I do not see here in this vote or in this transaction at all that there was any rule against it, and I explained that the board at that time felt that the member doing that was unduly complicating the situation of enforcement and unfairly so, perhaps, to the Guild and the other members, and I do not know of any restriction as such, and I know that I know from these minutes that the thing that they said, to me, means something different from that.

12692

Q. That they would expel him if he attempted to do so; that is said, is it not? A. Yes. I mean to point out that they did not fine him. They simply said if your business is apparently below the \$10.75—or, rather, apparently below \$16.75 and in the \$10.75 range, and we do not have any membership in that price range, we feel it is unfair for you to register goods below \$16.75, and if you continue to, why, apparently, they said, we will expel you, but there was no restriction, in my judgment. This is, I suppose, a matter of interpretation, but I see your premise on it.

12693

Q. Is it correct to say that the manufacturers who were registering \$10.75 at that time were in the junior and

12694

*Albert M. Post—For Commission—Direct.*

sportswear group? A. Well, it is correct to say that manufacturers who were registering, and with the knowledge of the Guild, if that is the assumption, yes.

Q. Were any dress manufacturers of ladies' dresses allowed to register below \$16.75 in September of 1934? A. Yes, that is right, none of them were.

Q. That is not exactly what I asked, but it is your statement that no dress manufacturers who manufactured ladies' dresses were permitted to register them if they sold at below \$16.75 in the month of September, in the year of 1934? A. Oh, I see your point. The answer is the same. That is right. They were not.

12695

Q. Now, when was it that the dress manufacturers of the \$10.75 price line were first allowed to register with the Guild? A. August, 1933—unless it was July 1.

Q. Dress manufacturers? A. Yes.

Q. I thought you just got through saying that in September, 1934, they were not allowed to. A. Both of those statements are correct, Mr. Haycraft.

Q. Was there a period in August, 1933, when you would have the J. M. Silverman Dresses, Inc., when you would have allowed them to register \$10.75 women's dresses? A. That seems a little speculative to me because I was not with the Guild at that time and I do not know what they would have done. I might assume or guess—

Q. If you do not know, please do not assume. A. Quite right:

12696

Examiner Averill: Please do not assume anything.

*By Mr. Haycraft.*

Q. When was the time you went with the Guild, first, Mr. Post? A. The latter part of October, or let us say November 1, 1935—no, no, no, 1934.

Q. 1934? A. Yes.

Q. Were there any \$10.75 dress manufacturers registering dresses at that time? A. Regularly—as against the junior and sportswear?

Q. Yes. A. No.

Q. When was it since you have been with the Guild that they were allowed to register with the Guild, and when I say “they,” I mean the regular \$10.75 dress manufacturers? A. July 1, 1935.

Q. July 1, 1935? A. Yes. If I may explain, that is when their membership started—then. We accepted registrations perhaps a week or so before on copies which they had not as yet shown, or which had not yet been shown to anybody.

12698

Q. You started to give protection? A. No, that is not correct. It is not correct. That is to say, to amplify my answer, we started on July 1, but in order to take care of the additional clerical and stenographic work we did not hold up registration until their membership started because there would have been a tremendous amount of registration from these men who intended to join the Guild, so we simply told them to come ahead and register their styles so that their registrations would be on our file, and the mechanical work of getting it into the file would be taken care of, but it was not to begin to operate until July 1, but we did accept the registrations—it may be that we accepted them as early as the 20th of June, but, as I said heretofore, their membership started the 1st of July.

12699

Q. Referring to Commission's Exhibit No. 64-A, being minutes of meeting of board of governors, Fashion Originators Guild, held at the Hotel New Yorker, Tuesday, June 4, 1935, at 6.45 o'clock P. M. I suppose this would be about the third page there, 64-A would be the first page. A. You mean on the second page of mine?

Q. The second page of yours, I guess. This is gotten up a little differently. A. Oh, I see. Which paragraph do you refer to?

12700

*Albert M. Post—For Commission—Direct.*

Q. I refer to this: "The executive director outlined the background of our discussion with the Association of Buying Offices and rendered a report regarding meetings held with a committee from the Association of Buying Offices. The report is herewith attached." I will ask you if you will—strike that out. The minutes that we have do not have the report attached. I would like to have you make a search for them. A. I know the report is in the file, and I will be glad to produce it.

Mr. Albert: If your counsel consents.

12701

The Witness: Of course. I believe it is in evidence already because I remember reading it the other day and going over the exhibits I saw it, but I am not prepared to tell you the number of it now. I do not remember the sequence of it here, but I will have it checked up.

*By Mr. Haycraft.*

Q. Now, I call your attention to Commission's Exhibits 66-A and B, being entitled as follows: "Minutes of board meeting of governors of Fashion Originators Guild held at the Waldorf-Astoria Hotel, Monday, October 21, 1935, at 7 P. M." A. Yes.

Examiner Averill: Off the record.

(There was a discussion off the record.)

12702

Examiner Averill: Back on the record.

*By Mr. Haycraft.*

Q. I call your attention to the following language in this report, it will probably be on the second page of yours. A. Yes.

Q. It is as follows: "Upon a motion by Mr. Wersba, seconded by Mr. Fox and unanimously carried, the Retail

Guild contracts entered into by the Oklahoma City retailers and the Baltimore retailers were approved." A. Yes.

Q. Have you got copies of those contracts? A. Well, I think we have and you have also, except that they were never approved by the—as I recall, one of these was one that never went into operation. They were not signed. Let me explain this as this is perhaps a little obscure. The method was simply that we secured the approval of our board of governors to enter into a contract if the local guild wished it. The approval is contained in that vote.

Q. Do you have copies of the agreement mentioned? A. This is the regular agreement, I believe. You have it there.

12704

Mr. Albert: Of the Baltimore Guild?

The Witness: The Oklahoma City never went in because I do not have that—I do not think that one was ever anything but just approved as set forth here. I do not think the matter ever went any further.

*By Mr. Haycraft.*

Q. I now call your attention to Commission's Exhibit No. 69-A and B, respectively, being as follows: "Minutes of meeting, board of governors, Fashion Originators Guild, held at the office of the Guild, Tuesday, February 18, 1936." A. Yes.

12705

Q. Reference is made there to the following: "A proposed draft of a reply to the telegram received from Mr. Pirie on behalf of certain State Street department stores was read. The board informally approved the reply providing certain changes were made therein." Who was the Mr. Pirie mentioned there? A. Mr. Gordon Pirie, one of the members of Carson, Pirie & Scott, Chicago, a Chicago department store.

12706

*Albert M. Post—For Commission—Direct.*

Q. And "State Street" referred to there is State Street in Chicago? A. Yes, sir.

Q. Do you know whether or not the records of the Guild have therein the telegram from the Guild and the reply received to, if any, that telegram in connection with this matter? A. I am certain the Guild has. I believe that it is in evidence already before the Commission.

Q. Do you know what the exhibit number is?

Mr. Albert: No, we do not know the exhibit number.

Mr. Haycraft: I am talking to the witness.

12707 A. No, I do not.

Mr. Albert: All right, we will play your way.  
Mr. Haycraft. You write the rules and we will play them.

*By Mr. Haycraft.*

Q. When was that put in, in Chicago? A. Yes, I think so. Of course you were ill, Mr. Haycraft, but therefore you might look at the testimony of either Mr. Wisanby or Mr. Lightly, I am not sure which one it is, or whether it is either, but I think so. I remember he said he had never seen it. I am referring to Mr. Lightly of Marshall Field & Company.

12708

Mr. Albert: That is right, I forgot you were not in Chicago, Mr. Haycraft. That is where it came out.

Mr. Martin: Who is the telegram from?

The Witness: Gordon Pirie.

*By Mr. Haycraft.*

Q. Will you look it up? I will ask you to refer—while you are looking that up, or, rather, while we are looking

it up to see if we can find it, I will ask you to refer to that same exhibit which reads as follows, in part: "Mr. Golby read a draft of a suggested reply which was to be sent to Mr. Neil Petree, president of the New York Retail Dry Goods Association. This letter was to advise Mr. Petree that the Fashion Originators Guild of America had no contractual relationships with the New York Dry Goods Association and, therefore, the Fashion Originators Guild could not construe his letter to us as a general repudiation of their member stores' individual agreements." Is that the telegram that you had reference to?

Mr. Martin: The telegram from Mandel Brothers?

12710

The Witness: No.

Mr. Albert: No.

*By Mr. Haycraft.*

Q. Does the Guild have a copy of the letter from Mr. Petree and the reply? A. Yes, that is already in evidence also. I am not sure about the reply being in evidence, but I am certain that Mr. Petree's telegram is in evidence.

Q. Where would that be? A. Well, it is my recollection that it was put in in Chicago. That is all part of that same situation but I am not certain of that. I know it was in evidence because I had lunch with Mr. Petree one day and I was telling him about it.

Q. I think the easiest way would be to produce it and we can check against it and make sure. A. Perhaps. 12711

Q. Will you look up your records and bring the Postal telegram from Pirie and the letter and correspondence with Petree referred to in those minutes also? A. I will be glad to do so if Mr. Albert will permit me.

Q. You may consult with Mr. Albert.

Mr. Albert: You may tell Mr. Haycraft that I will be glad to consult with you, Mr. Postal.

12712

*Albert M. Post—For Commission—Direct.*

The Witness: My name is Post and not the Postal Telegraph Company.

Mr. Albert: That is a conclusion, Mr. Post. Be careful.

*By Mr. Haycraft..*

12713

Q. Referring now to these same minutes from the board of governors authorizing that a red card be issued against Lord & Taylor for repudiating its agreement with the Fashion Originators Guild, this repudiation being based on a telegram, or, rather, upon a letter being received from Mr. Neil Petree, president of the New York Dry Goods Association; is that the same letter that you referred to in the paragraph there that you have reference to? A. The letter is the same. The minutes are not quite as clear on that particular matter as they might be, but the letter referred to—answering your question, the letter referred to is the letter from Neil Petree, yes.

Q. Lord & Taylor's name was mentioned in that letter, was it? A. I believe so, yes.

Q. Are Lord & Taylor the only retail dealers that claim to reserve the right to purchase copies below \$10.75? A. No. That is why I say that the transcript of the minutes of the meeting here is not quite as clear on that transaction as they might be.

12714

Q. Do you have an independent recollection of just what did transpire at this meeting with respect to Lord & Taylor? A. Well, I think the minutes are clear as to what transpired at the meeting with regard to Lord & Taylor. There was a vote to advise our members by way of red card. My point was that the minutes do not correctly indicate what transpired prior to the meeting.

Q. What did transpire prior to the meeting that is not recorded in the minutes? A. That is a long story. I will go ahead.

Mr. Albert: Go right ahead, Mr. Post.

*By Mr. Haycraft.*

Q. Yes. A. Trying to confine my answer to the particular situation of Lord & Taylor rather than the broad problem that was confronting us at the time as is indicated by these various communications and general letters which we received from various people, there was a meeting called—at this meeting I cannot recall the exact date, although I shall subsequently, when I tell the whole story—but it was referred to on Mr. Bergdahl's testimony, although he was not present—on cross-examination, he said, I believe, that Mr. Reilly, his superior, had attended the meeting at the Union League meeting. I believe he did say that that was around February 10. The meeting consisted of the group of presidents, I guess, of many of the largest stores in New York. As a matter of fact, it was—I do not know whether it is exactly proper to call it a meeting. It was a luncheon arranged by Mr. William Riordan, president of Stern Brothers, on his own initiative, purely as a gesture to bring the stores and the Guild together for a discussion.

12716

Mr. Petree was there; Mr. Riordan, of Stern Brothers, was there; of course, the president of Lord & Taylor's was there; of course, Mr. Perday, Edwin Marks, vice-president of R. H. Macy & Company, was there; Mr. E. Puckett, president of the Allied Stores, and others—I do not recall at the moment who they were—were present.

Mr. Riordan called me that morning and said—if you will excuse me, there were two other important witnesses, Mr. Mike Shatt, president of Bloomingdale's, and Col. Reilly, executive director of the A.M.C.

12717

Mr. Riordan called me either that morning or the evening before, I am not certain of that at this moment, and said that he did not—first, he said that these gentlemen who were taking lunch with him, said who they were, and he thought it would be a good idea to see what the

12718

*Albert M. Post—For Commission—Direct.*

differences were in the Guild, or with the Guild, on the part of some stores, and that he would like to have me join them for lunch, which we did.

12719

It was an informal meeting, I suppose, and the retail stores represented no established organization. They were retailers and most of them were members of the National Retail Dry Goods Association; I suppose all of them were. Most of them were members of the New York Dry Goods Association, or whatever the correct corporate name of that organization is, although Mr. Puckett, president of the Allied Stores, is a man who has no store here in New York, but he has a group of some fifty or more stores, including some of the largest stores in the country, included among them being Jordan Marsh in Boston, Mass.

So there was a discussion, and after the luncheon I was asked what was the exact situation at that time because at that time we had red carded R. H. White and Strawbridge & Clothier, and the evidence by these minutes is, and perhaps by the evidence already before the Commission, is in, in that connection, but if not, I believe it will be by the time the full evidence is in, it will be there, but there was a definite attempt on the part of this one organization who obviously were set upon—

12720

Mr. Haycraft: I do not like to interrupt you, Mr. Post, but please do not testify what someone else might say or do at this time, but just as to what you heard and what you saw. You understand the position I am in.

Mr. Albert: I suggest that the witness be permitted to continue his train of thought and not be interrupted, and that the witness be permitted to answer the question in his own manner here without interruption by Mr. Haycraft, the same objection as Mr. Haycraft has previously made when I unfortunately interrupted his witnesses. I do not

believe Mr. Haycraft is doing it intentionally, but I think the witness should be permitted to answer the question.

Examiner Averill: Off the record.

(There was a discussion off the record.)

Mr. Albert: If your Honor please, I do not believe that because Mr. Haycraft does not like the answer that he should be permitted to cut it off.

Mr. Haycraft: I think the witness understands. I will be glad to have him go ahead, but if he will try to refrain from testifying as to what happened in the minds of others I think it will be better.

The Witness: I understand your objection, Mr. Haycraft, although there are, of course, in certain situations where I was definitely—

*By Mr. Haycraft.*

Q. You can certainly say what you believed. A. What we believed.

Q. What you believed. A. All right. Now, as a matter of fact, we knew that there was a movement afoot to stir up a sort of crystallized opposition to us, and we knew that because that was the basis for this meeting and luncheon that Mr. Riordan had called.

May I say that Mr. Riordan called the luncheon at the time that he notified me; whether that was the night before or the morning before, I am not certain at this moment. I believe my personal notes in my diary will indicate that, when it comes time. I am not completely prepared on this thing without my notes here, but I am sure my notes will have it. Perhaps this has no probative value in this case, but Mr. Riordan happened to be in Filene's with me twenty years ago, and we were old friends, and he is a retailer, and the president of a large metropolitan store, and was quite well aware of what was

12724

*Albert M. Post—For Commission—Direct.*

going on, and he felt if the complaints of the A.M.C. were justified that certainly I should know it, and just what the Guild was doing about it, so the Guild could adjust it, and if they were not justified that it was better that the true background of the situation be given to everyone, and I think what happened was that he called me and told me about certain conferences and meetings and expressions that he had heard, and what could be done about it, and suggested that we have this luncheon, and that is the way the luncheon came about in this particular case.

12725

He felt if these people were there at the luncheon and the matter was explained, and if we were not very far apart across the table, most of these things could be adjusted. As a matter of fact, before I attended the meeting, I notified our board of governors because I felt I had no authority to attend such a meeting without their knowledge and their consent, and I also specifically developed subsequently this particular—but I will go into that at some other time. It is a contention of the Guild, and it is my belief, that the so-called controversy between the Guild and the retailers was purely a controversy between a small group of retailers, the A.M.C. particularly, and that—

Q. (Interposing) May I ask if Lord & Taylor were members of the A.M.C.? A. No.

12726

Q. Of course, my question was directed to Lord & Taylor. A. I warned you at the beginning it is not an easy question to answer. If you will recall, I mentioned that at the beginning, because I said that the minutes were not quite complete as to the background.

Q. Yes. A. The A.M.C. in various conferences that we had had with officials of the Guild, myself included, had indicated that they had no serious objection to the Guild program of design protection, and had supported it and would support it, and that it was fundamentally

correct and sound and honest, but they most seriously objected to an organization that interested itself in what they called—

Mr. Haycraft (interposing): Mr. Examiner, I dislike to interrupt the answer again, but, as I said, I am only interested in the Lord & Taylor matter and not in the A.M.C., and I do not want to get into a long discussion of the A.M.C. problems, and if the answer requires that—

The Witness: It does require it.

Mr. Haycraft: I will withdraw the question and the answer both because I do not think I desire to be placed in this position.

12728

Examiner Averill: You placed yourself there.

Mr. Albert: I have no intention, your Honor, of being arbitrary, but I certainly think the witness should be allowed to complete his answer.

Mr. Haycraft: It is a matter of evidence that they can bring in at the proper time, and my whole question has simply to do with Lord & Taylor.

Examiner Averill: You cannot separate one from another in explaining how things happen, you cannot separate them entirely, apart, from the whole, and simply go into that part without referring to the whole at all. I think that is impossible in many instances, and therefore if you do not care to have the witness testify to the matter in its generalities, I will strike all the witness' testimony in connection with the matter.

12729

Mr. Haycraft: That is my motion.

Mr. Albert: I object, if your Honor please, because this was a fair question and the witness was answering it fairly, and answering it over warning, and I think he has a right to answer it.

Examiner Averill: Gentlemen, this shows now the necessity for striking it because we cannot go

12730

*Albert M. Post—For Commission—Direct.*

off into far fields that have nothing in direct relationship to this, and that certainly do not come into the head of evidence. It is a very unfortunate situation that we have gotten into, and therefore the motion to strike all of the questions and all of the answer is granted, not physically out, but the motion to strike is granted.

12731

Mr. Albert: Exception, and I also wish to object to Government's counsel refusing to permit evidence in the record which clearly manifests the contentions of the Fashion Originators Guild of America and that it clearly shows the basis of the entire differences that existed between those who have testified on the stand heretofore and those who are testifying now.

Mr. Haycraft: I have no objection to that going in at the proper place and time, and I will have the opportunity to cross-examine on these things, but my question did not call for the answer I got in response to it, and the answer is not responsive.

12732

Examiner Averill: The answer was responsive, but I am going to strike it out because of the fact I think it would be very unfortunate to have the witness at any time go into things of that sort, and when we are going into them we will simply get into them more and more at length, and this is something that you simply cannot restrict. I am not finding fault with the witness. The witness is doing well and ably in connection with the matter, but it is a matter apparently now where it cannot be separated from hearsay and while it is cluttering the record up with matters, it is simply getting them in such shape where they will have no probative value that you will be able to segregate from the others. You gentlemen may bring that out by way of question and answer.

By Mr. Haycraft.

Q. Mr. Post, in these same minutes, the statement is made that the Lord & Taylor agreement with the Guild does not provide for any exception below \$10.75 in the return of garments. Did you have an agreement with Lord & Taylor—have you still that in your possession or did you return it to Lord & Taylor? A. I believe we have it. I am not certain.

Q. Do you know whether it was a regular form, or whether it was a letter indicating their desire to cooperate? A. It was a letter and followed the regular form rather generally, but it was on their letterhead.

Q. I would like to have you produce that letter. A. 12734  
With the consent of my counsel.

Q. Is Lord & Taylor the only New York retailer mentioned in the Petree letter, that was red carded by the board of governors? A. Yes—no—I cannot say; I will have to get the letter.

Mr. Albert: Do you think, your Honor, that it would be well to take our usual five-minute recess at this time?

Examiner Averill: No, I do not believe we will be able to take the usual five-minute recess to-day, and we will be obliged to go straight ahead.

By Mr. Haycraft.

Q. Referring to Commission's Exhibit 84, which is 12735  
headed as follows: "Minutes of meeting, grievance committee, held at the Guild office, Tuesday, October 29, 1935, at 5 P. M." A. Yes.

Q. The last paragraph reads as follows: "The Committee recommends that the firm of Anna May Love, Inc., take a membership in the Fashion Originators Guild and in the event they failed to do so, they would recommend that the Board of Governors expel the firm of Charles

12736

*Albert M. Post—For Commission—Direct.*

Armour & Bro., Inc., from this organization." Do you know whether or not, as a matter of fact, Anna May Love, Inc., became a member of the Guild? A. I, as a matter of fact, know they did not.

Q. What action was taken with respect to Charles Armour & Bro., Inc., subsequent to the date of this? A. There was no action.

Q. There was not? A. No.

Q. No further action at all? A. Well, I do not know whether or not receiving an explanation is an action or not.

12737

Q. Were they fined or suspended or anything of that kind?

Mr. Albert: The answer is "yes" or "no."

A. Well, there is yet another answer; I do not know. I do not think they were but I do not know that they were, and I would not be able to testify.

*By Mr. Haycraft.*

Q. Will you look that up and see what the situation was with respect to that? A. Well, with the consent of my counsel.

12738

Q. Referring to Commission's Exhibit 86, which is headed as follows: "Minutes of meeting, grievance committee, held at the offices of the Guild, Thursday, January 2, 1936." Do you notice there that the last paragraph of that meeting states as follows: "B. Tobias, Inc. For failing to conform with the rules of their membership, the grievance committee voted that this firm be suspended from membership, and the committee is drafting a report to be submitted to the Board of Governors of the Fashion Guild at its next meeting recommending the expulsion of B. Tobias, Inc. from membership." Do you know what the B. Tobias Company had done to

ing about that action? A. Well, I know what the Guild's position was on it, if that is what you mean; yes,

Q. Just what were the circumstances in that regard?

Mr. Albert: If your Honor please, here comes another one of these uncertain questions, and I ask that Mr. Haycraft decide here and now whether he wants the witness to answer or not when he propounds a question of this kind.

Examiner Averill: I think it would be well.

by Mr. Haycraft.

Q. I will withdraw that question to you, and I will ask you what ruling of the Guild was violated by B. Tobias, Inc.? That should not be a long story. A. Well, the definite thing that brought that about was the refusal of B. Tobias, Inc., to permit the auditing of its books in accordance with his application form, and the rules of the Guild in that regard.

Q. What price line did B. Tobias, Inc., manufacture? A. I believe \$10.75. He was a member of the Dressmakers League.

Q. Were you auditing the books to see whether or not he was selling to red carded retailers? A. We audit all of our members' books, both for that reason and perhaps for others as the occasion may come up.

Q. Was that the reason when this particular audit was made? A. Well, I think the particular reason for auditing it is to find out whether they are selling red carded accounts—that is the usual thing that they are audited for.

Q. For that? A. That is correct. May I say that there was some complaint that they had been selling red carded accounts, although that particular audit was a perfectly routine one in the regular schedule.

12742

*Albert M. Post—For Commission—Direct.*

Q. The record that we have does not show that any further action was taken by the Guild or the grievance committee or the board of governors. I would like to know whether or not there was any further action on the B. Tobias, Inc., case? A. He has been expelled.

Q. Expelled, not suspended, but expelled? A. Expelled, I believe.

12743

Q. I would like to have you look that up— A. Well, I can say this to you about it without looking it up, and this might clear up your point. There was some delay on the final active expulsion due to the fact that he was a member of the Dress Creators League, and we felt that they should know what the situation was first, and I believe subsequently in the year 1936 there was action taken in that regard perhaps after you had asked for our minutes' action against the firm was definitely taken.

Q. I would like to have you look that up and bring whatever minutes you have on the B. Tobias, Inc., matter. A. I will do so with the consent of my counsel.

Mr. Haycraft: I ask to have these marked 1025-A and 1025-B.

(The documents were marked for identification Commission's Exhibits 1025-A and 1025-B.)

*By Mr. Haycraft.*

12744

Q. I show you Commission's Exhibits 1025-A and 1025-B and ask you if you can identify that between correspondence between the Guild—copies of correspondence between the Guild and your shopper in Baltimore, Mrs. Lapedus?

Mr. Keller: What is the number of that?

Mr. Haycraft: 1025.

Mr. Keller: A and B.

The Witness: What is your question?

(Question read.)

A. Yes, I suppose if you mean—and I am not begging the question, but what it means is correspondence between Mr. Goldston and the shopper, and correspondence between the Guild and the shopper, I think—yes, it is correspondence between Mr. Goldston and the shopper.

Mr. Haycraft: I offer this in evidence.

Mr. Albert: No objection.

(The documents heretofore marked for identification Commission's Exhibits 1025-A and 1025-B were marked as exhibits and received in evidence.)

(The document heretofore marked for identification Commission's Exhibit 1026 was marked as an exhibit and received in evidence.)

12746 ●

Mr. Haycraft: May the record show also that this Mrs. Lapedus is the Baltimore shopper of the Guild; is that correct?

The Witness: Yes.

(The documents heretofore marked for identification Commission's Exhibits 1027-A, 1027-B and 1027-C were marked as exhibits and received in evidence.)

(The documents heretofore marked for identification Commission's Exhibits 1028-A and 1028-B were marked as exhibits and received in evidence.)

12747

*By Mr. Haycraft.*

Q. I show you Commission's Exhibit 1029 for Identification, and ask you if you can identify that as a carbon copy of a letter from The Hub Company, Baltimore, Md., attention Mr. Pollack, dated December 10, 1935, from the Fashion Originators Guild of America, Inc., signed by Jack Goldston? A. I identify that as a copy of a letter taken from our files.

12748

*Albert M. Post—For Commission—Direct.*

Q. Was the original written by Mr. Goldston? A. Yes.

Mr. Albert: May I examine on the voir dire, your Honor?

Examiner Averill: Yes.

*By Mr. Albert.*

Q. Is there any authority for the writing of this letter by Mr. Goldston, Mr. Post? A. How do you mean?

Mr. Haycraft: I object.

Mr. Albert: I want to show that there was no authorization by the Guild for the writing of this.

12749

Mr. Haycraft: I object to that. That is not proper examination on voir dire.

Mr. Albert: Certainly, otherwise I object to it on the ground that no foundation has been laid to show the authority of the writer of this document by the Guild in the manner in which it was written.

Examiner Averill: Objection overruled. He has simply identified that letter as a letter in his files. If it was written by this gentleman, that is simply that point.

Mr. Albert: I object to the relevancy and materiality of the letter unless it is shown that the writer of the letter had the authority to write the letter.

12750

Examiner Averill: If you are going to raise any such objection as that, of course we will have to go all the way back into it, and Mr. Jack Goldston having written so many letters his authority has not been questioned in the past on them, of course.

Mr. Albert: That does not mean that he has the authority to write this, that he can sit down and write anything that he wants to, and ascribe it to the Guild.

Examiner Averill: I understand your position in regard to that matter, but as far as this particular document is concerned, if you are going to go back to all of the papers that have gone in and show the authority in Jack Goldston in writing them, I think it would take a long time.

Mr. Albert: This is a little different objection. If I might have an answer from the witness it might very well be that he is properly within his authority, and in order to avoid the objection I wanted to ask Mr. Post if that authority existed in Mr. Goldston to write the letter, and if Mr. Haycraft will permit me to ask Mr. Post that I will not press my objection.

12752

Examiner Averill: Gentlemen, I overrule the objection. It has been clearly shown throughout this record that Mr. Jack Goldston has been acting in the capacity he has acted for the Guild, and if it is desired to assail his authority to do the thing, it can be done directly but not in this manner, because if that is the case we would have to go back through the entire record on every paper in here for something or another. Therefore, the objection is overruled and the letter in question heretofore marked Commission's Exhibit 1029 for Identification will be received in evidence, the same purporting to be a copy of a letter dated December 10, 1935, from the F.O.G.A., by Jack Goldston, to The Hub Company, Baltimore, Md., attention Mr. Pollack.

12753

(The letter heretofore marked for identification Commission's Exhibit 1029 was marked as an exhibit and received in evidence.)

12754

*Albert M. Post—For Commission—Direct.**By Mr. Hagcraft.*

Q. Mr. Post, have you prepared in any way a statement showing the total volume of business done by Guild members during the years 1933, 1934 and 1935? A. No.

(Whereupon, at 4 o'clock P. M., December 17, 1936, the hearing in the above-entitled matter was adjourned.)

12755

Room 901, 45 Broadway,  
New York, N. Y.,  
December 21, 1936.

Met, pursuant to adjournment, 10 A. M.

Before: EDWARD M. AVERILL, *Examiner.*

(Same Appearances.)

PROCEEDINGS.

Examiner Averill: Gentlemen, the hearing will come to order. You may proceed.

Mr. Martin: Your Honor please, I should like to have this document marked for identification Commission's Exhibit 1032.

12756

(The document was marked for identification Commission's Exhibit 1032.)

Mr. Albert: I believe, your Honor, that when we adjourned—that is, when the adjournment was taken—that you signified that over the week-end you were going to examine the Dr. Teper figures and pass upon the question of the admissibility of them.

I am recalling to your attention that after the colloquy that occurred between counsel no attempt was made what

soever on the part of Commission's counsel, Mr. Haycraft, or anyone else, to any way solidify, reinforce or bolster up the figures that had been put on the record, in the manner in which your Honor is familiar, and that, therefore, they remain in the same conditions at which your Honor, without in any way committing yourself or binding yourself, expressed the belief of at least a reasonable doubt as to their admissibility.

Mr. Martin: If your Honor please, as I recall it, these figures were introduced and Dr. Teper testified from a paper, having a prepared statement showing how these figures were arrived at.

Your Honor expressed the opinion that his statement was very plain. However, your Honor was uncertain as to whether his explanation made in the record was plain and requested that what he did testify to in the record be written up and the two papers compared, and it was then your Honor's intention to, with the consent of counsel, to submit the witness' statement as showing how he arrived at these figures if the testimony which you are really uncertain about proved to be, in fact, satisfactory.

Examiner Averill: I think that is about it.

Mr. Albert: May I say a brief word here?

Examiner Averill: Yes.

Mr. Albert: I want to point out something, Mr. Martin; you suggested to Mr. Haycraft that Mr. Haycraft put into the record this prepared statement of Dr. Teper's, but Mr. Haycraft pointblank refused to do so and rested the significance and accuracy and the relevancy of the figures entirely upon Dr. Teper's statement in the record.

Examiner Averill: Off the record.

(There was a discussion off the record.)

Examiner Averill: Gentlemen, it will be recalled that at the last hearing on the 17th certain papers known as Commission's Exhibits 1030 and 1031, to be exact, being a compilation of figures, had been offered and had been received in evidence, subject to a motion to strike in the

12760

*Albert M. Post—For Commission—Direct.*

event that the examination of the witness under whose guidance the figures were prepared showed a substantial basis for such figures.

It appears to the Trial Examiner that the testimony of the witness does not furnish the substantial basis for such figures, and that the motion now pending to strike the papers heretofore admitted as Commission's Exhibits Nos. 1030 and 1031 from the record should be granted.

Therefore, it is ordered that the papers heretofore marked in evidence as Commission's Exhibits Nos. 1031 and 1030 be, and the same hereby are stricken. Of course, counsel offering figures has the right at a later date to recall the witness who prepared the figures or other witnesses, if such are available, by which the figures may be substantiated, and those papers may be again offered.

12761

(Whereupon, Commission's Exhibits 1030 and 1031 were stricken.)

Mr. Martin: Note an exception.

Examiner Averill: An exception noted to counsel.

Mr. Martin: I will recall Mr. Post for further examination.

ALBERT M. POST was thereupon recalled as a witness for the Commission and, having been previously sworn, testified further as follows:

12762

*Direct examination (continued) by Mr. Martin.*

Q. I hand you Commission's Exhibit 1032 for Identification and ask you if you can identify that? A. Yes.

Q. What is it? A. It is a recapitulation of the card files secured in the general manner that was outlined at the time when Mr. Haycraft requested those figures.

Mr. Martin: I offer it in evidence.

Mr. Albert: No objection.

Albert M. Post—For Commission—Direct.

12763

(The paper heretofore marked for identification Commission's Exhibit 1033, was marked as an exhibit and received in evidence.)

(The paper heretofore marked for identification Commission's Exhibit 1034, was marked as an exhibit and received in evidence.)

(The document heretofore marked for identification Commission's Exhibit 1035, was marked as an exhibit and received in evidence.)

(The document heretofore marked for identification Commission's Exhibit 1036, was marked as an exhibit and received in evidence.)

12764

(The documents heretofore marked for identification Commission's Exhibits 1037, 1038, 1039 and 1040, were marked as exhibits and received in evidence.)

(Whereupon, at 12.15 o'clock P. M., December 21, 1936, the hearing in the above-entitled matter was adjourned.)

Federal Trade Commission Building,  
Washington, D. C.,  
September 20, 1937.

Met, pursuant to notice at 10 A. M.

12765

Before: CHARLES F. DIGGS, *Examiner*.

APPEARANCES:

REUBEN MARTIN, Attorney for the Federal Trade Commission.

Mr. Martin: If the Examiner please, by arrangement with the counsel for the respondent it has been agreed that

12766

*Proceedings Before Examiner.*

- this hearing would be postponed until 10.00 o'clock A. M.,  
 ● October 11, 1937, to be held in Room 500, 45 Broadway,  
 • New York.

The Examiner: I understand that this agreement is acquiesced in by the Commission. Therefore this hearing is adjourned and will be resumed at 10.00 o'clock A. M. on October 11, 1937, in Room 500 at 45 Broadway, New York City.

(Whereupon the hearing in the above-entitled matter was adjourned to October 11, 1937, to be resumed in New York City.)

12767

Room 901, 45 Broadway,  
 New York, N. Y.,  
 October 13, 1937.

Met, pursuant to adjournment, 10 A. M.

Before: CHARLES F. DIGGS, *Trial Examiner.*

## APPEARANCES:

EVERETT F. HAYCRAFT, REUBEN J. MARTIN and RUSSELL KING, attorneys for the Federal Trade Commission.

MILTON C. WEISMAN, HERBERT KELLER and MELVIN A. ALBERT, attorneys for the respondents, 1450 Broadway, New York, N. Y.

12768

## AFTERNOON SESSION

(The hearing was resumed at 1 o'clock P. M., pursuant to adjournment for the noon recess.)

Trial Examiner Diggs: I understand that the attorneys for the Commission and the attorneys for the respondents,

have agreed that in order to save time, that it would be necessary in order to introduce over one hundred witnesses, to establish the amount of business done by the various members of the Guild, both as to their gross and net business, that a plan had been reached whereby the counsel for the respondents is to submit to the counsel for the Commission, the list of all of the members of the Guild as to April 16, 1936, in so far as it is possible to obtain them, setting forth their gross and net business, and that after this shall have been done, that there will be a tabulation made setting forth the total volume of both gross and net business done by all the members of the Guild during the periods of 1933, 1934 and 1935, or such periods as they may have been members of the Guild; with the further provision as to this latter phase, that such members who have come in during the early part of 1936, endeavor will be made to obtain the 1935 figures.

12770

In addition to this, the counsel for the respondents will also furnish to the counsel for the Commission a statement showing the price line of each member of the Guild.

Now, as I understand it, gentlemen, in order to secure this information, it is going to require some time; it has been suggested by counsel on both sides that this date be continued until 1.30 P. M., October 18, 1937, at Room 500, 45 Broadway, New York.

I understand that the statement I have just made is a fair statement of the situation as you have outlined it to me, is that correct?

12771

Mr. Martin: That is correct.

Mr. Weisman: Yes, that is correct.

Mr. Haycraft: I want to address you, Mr. Examiner, with respect to a matter that came up in this matter on December 21, 1936, at which time the then Trial Examiner struck from the record Commission's Exhibit 1030 and 1031 with this comment on page 8069:

12772.

*Dr. Lazare Teper—For Commission—Direct.*

"Of course, counsel offering figures has a right at a later date to recall the witness who prepared the figures and other witnesses who are available, by whom those figures may be substantiated and those papers may be again offered."

I wish at this time to recall the witness referred to, Dr. Lazare Teper and ask him if he will take the witness stand at this time.

12773

DR. LAZARE TEPER, a witness for the Commission having already been duly sworn, testified as follows:

*Direct examination by Mr. Haycraft.*

Q. Are you the same Dr. Teper that testified in this proceeding on December 17, 1936? A. Yes, sir.

Q. Do you hold the same position at the present time that you held at the time you testified? A. No.

Q. What is your present position? A. Research Director for the International Ladies' Garment Workers Union.

Q. How long have you occupied that position? A. About three days.

Q. Where do you have your present office? A. 3 West 16th Street, New York City.

Q. What are your duties in your new position?

12774

Mr. Weisman: I object to that as being immaterial. He has been three days in his position. That won't qualify him very much.

Trial Examiner Diggs: I will take the answer. I want to find out what his position is.

A. I have been transferred from the Dressmakers' Joint Board where I occupied the position of research director, to the position I now hold in the office of the International

Ladies Garment Workers Union, which is the parent organization, to occupy the same position and to engage in exactly the same task only on a larger scale, that is, the collection and gathering of information pertaining to the garment trades, specifically to the dress industry in particular, and the interpretation of that data.

Q. Interpretation of the data in what respect for what purpose? A. The purpose of the Research Bureau is essentially to provide facts upon which the Union can base its action or make its decisions. I suppose that answers your question.

Q. Where are the facts obtained? A. The facts are obtained from several sources. Some are by direct surveys with our own staff; others from Governmental agencies. The third type of facts is from private agencies.

12776

Q. I show you Commission's Exhibit 1043 for Identification, consisting of eight pages and I ask you if you prepared it? A. Yes.

Q. Now, referring to Commission's Exhibit 1043 for Identification and I will ask you whether or not the data contained on pages 1 and 2 of this exhibit is the same data that you identified on the previous occasion as Commission's Exhibits 1033 and 1031?

Mr. Weisman: I object to that as being incompetent, irrelevant and immaterial. I object to the witness referring to any paper not in evidence, and I object to him identifying something as the same as something else. The record speaks for itself when it gets into evidence.

12777

Trial Examiner Diggs: Off the record.

(Discussion off the record.)

Trial Examiner Diggs: Was the data which is contained on Commission's Exhibit 1043 for Identification secured from the same sources as the data which appears on Commission's Exhibits 1031 and 1030?

12778

*Dr. Lazare Teper—For Commission—Direct.*

The Witness: It was secured from the same sources.

Trial Examiner Diggs: I asked you if that was the same?

The Witness: It is exactly the same data.

Trial Examiner Diggs: Secured from the same sources?

The Witness: Yes. The figures are not changed in any way.

Trial Examiner Diggs: I overrule the objection. You may have an exception.

Mr. Weisman: Exception.

12779

*By Mr. Haycraft.*

Q. Now, I will ask you to tell the Examiner what pages 3 to 8 are of Commission's Exhibit 1043 for Identification?

A. Pages 3 to 8 describe the method used in preparing the figures for the volume of business of the dress industry for 1934 and 1935, and the discussion of data as gathered by certain other agencies on the volume of business in the dress industry.

Q. Are there any adequate statistics gathered for the dress industry either by the United States Government or any other agency?

Mr. Weisman: I object to that.

Trial Examiner Diggs: That you know of.

12780

*By Mr. Haycraft.*

Q. That you know of.

Trial Examiner Diggs: Objection overruled.

Mr. Weisman: May I state my objection?

Trial Examiner Diggs: Yes.

Mr. Weisman: I object to that inquiry as to whether he knows of that or not. After all, to prove a negative by a witness such as this—

*Dr. Lazare Teper—For Commission—Direct.*

12781

Trial Examiner Diggs (interrupting): Off the record.

(Discussion off the record.)

Trial Examiner Diggs: Objection overruled.

A. To the best of my knowledge there are no adequate statistics of the volume of business in the dress industry gathered by the United States Government. The Census Bureau does collect statistics but for one reason or another—we do not need to go into those reasons—they do not reach every firm. For example, we found that for 1935 the Census listed 1738 contracting firms doing business in the United States in the dress field. Our own enumeration in New York never fell below 2128 contracting firms, and that is just for the New York Metropolitan area. If the number of firms which were on contractual relations with the Union and are doing business is larger than the census shows for the entire country, then of course something is wrong with the census figures. I think that answers your question.

12782

*By Mr. Haycraft.*

Q. I ask you whether there was any other besides the United States Government figures, whether there is any other agency preparing such figures? A. During the existence of the Dress Code, the Code sold labels to manufacturers, and theoretically a manufacturer was supposed to put a label on each garment.

12783

Mr. Weisman: I move to strike that out as not being responsive.

Mr. Haycraft: I think he should be allowed to complete his answer.

Trial Examiner Diggs: Let him complete the answer.

12784

*Dr. Lazare Teper—For Commission—Direct.*

A. (Continuing) If the theory that I stated is correct, then we have figures issued by the Code on the number of labels sold, and each label would represent one dress which was manufactured by a manufacturer. In actual practice, however, a certain amount of chiseling has been going on, and so the chances are that the labels are somewhat lower than the number of dresses manufactured by the industry, but it should represent the best available figures on the unit production by price lines in the dress industry.

*By Mr. Haycraft.*

12785 Q. Have you made an estimate of the dollar volume of dress business done in the United States from the available sources?

Mr. Weisman: I object to that.

Trial Examiner Diggs: I am going to let him answer yes or no.

The Witness: Yes.

*By Mr. Haycraft.*

Q. And were Commission's Exhibits 1030 and 1031 the estimate which you made? A. Yes.

12786 Q. Now, will you testify as to the sources of the material which you used in making up your estimate which resulted in Commission's Exhibits 1030 and 1031? If you have work sheets with you, I should like to have you produce them, at this time. A. The material used in the preparation of our estimates is of a different nature. In the first place we used the label sales by the Code Authority as a base. Secondly, we secured the volume of the business of a number of manufacturers and jobbers, dollar volume as well as label purchases. That answers the immediate question as to the source of the material.

Q. Have you your work sheets which you used in preparing Commission's Exhibits 1030 and 1031? A. Yes. Here they are (indicating).

*Dr. Lazare Teper—For Commission—Direct.*

12787

Mr. Haycraft: I ask to have these marked for identification.

(The sheets referred to were thereupon marked for identification Commission's Exhibits 1044-A and B for Identification.)

*By Mr. Haycraft.*

Q. Showing you Commission's Exhibits 1044-A and B for identification, I will ask you to state what that exhibit is?

Mr. Weisman: I object to that.

Trial Examiner Diggs: Are those your work sheets?

12788

The Witness: Yes, sir.

Trial Examiner Diggs: I overrule the objection

*By Mr. Haycraft.*

Q. The work sheets you used in the preparation of Commission's Exhibits 1030 and 1031? A. That is right.

Q. The work sheet which I just now called your attention to was for 1934, Commission's Exhibit 1030? A. That is right.

Mr. Haycraft: I should like to have these papers marked respectively, Commission's Exhibits 1045 and 1046 for Identification.

12789

(The sheets referred to were thereupon marked Commission's Exhibits 1045 and 1046 for Identification.)

*By Mr. Haycraft.*

Q. I show you Commission's Exhibits 1045 and 1046 for identification and ask you if they are also work sheets used by you in the preparation of Commission's Exhibit 1030? A. Yes, sir.

12790

*Dr. Lazare Teper—For Commission—Direct.*

Mr. Haycraft: I offer these work sheets in evidence, Mr. Examiner.

Mr. Weisman: Objected to as incompetent, immaterial and irrelevant.

Trial Examiner Diggs: Off the record.  
(Discussion off the record.)

Trial Examiner Diggs: As I understand, Commission's Exhibit 1030 at one time was admitted in evidence and subsequently it was stricken from the record, that is the status of the exhibit to-day?

Mr. Weisman: That is right.

12791

Trial Examiner Diggs: Now, in view of that fact, I cannot see how counsel can undertake to offer in evidence these work sheets which form the basis for Commission's Exhibit 1030 when Exhibit 1030 is not in evidence itself.

Mr. Haycraft: The purpose of that, Mr. Examiner, is that Exhibit 1030 was rejected because there was insufficient substantiating data to show the source from which it was prepared, and that is the reason I am offering these exhibits in evidence, to supply the data which was absent from the former offer on the former occasion. After that, when I have completed that and after examining the witness with respect to these work sheets, then I will expect to re-offer Commission's Exhibits 1030 and 1031.

12792

Trial Examiner Diggs: You object to that, I take it?

Mr. Weisman: Yes, your Honor.

Trial Examiner Diggs: Off the record.  
(Discussion off the record.)

Trial Examiner Diggs: Counsel for the Commission has just advised me that the purpose of this offer is in order to afford him an opportunity of examining the witness concerning the data which

appears on these two exhibits, to wit: Commission's Exhibits 1044 to 1046 for Identification, and, of course, he would be unable to examine him as to the contents unless the papers were in evidence and that makes it necessary for him to offer them in evidence.

Mr. Weisman: That very statement makes it necessary for your Honor, if you are going to follow the rules that have been laid down by this Commission and the Courts to exclude it.

Trial Examiner Diggs: Off the record.

(Discussion off the record.)

Trial Examiner Diggs: I overrule the objection and I will admit this paper in evidence, for the purpose of affording the Commission's attorney an opportunity of showing by this witness the sources of data which appears upon these exhibits, 1044, 1045, 1046, and then when that shall have been done, and this original exhibit 1030 is again offered, of course, I will then pass upon the admissibility of that particular exhibit. I take it that this is a mere preliminary matter in order to permit counsel to couple up if he can and supply the deficiency which was suggested by the former Trial Examiner as the basis for his granting the motion to strike Commission's Exhibit 1030. And you may have an exception to that.

(The sheets referred to, heretofore marked for identification Commission's Exhibits 1044-A and B, 1045, and 1046, were thereupon received in evidence.)

Mr. Weisman: Mr. Examiner, I want this statement on the record—

Trial Examiner Diggs (interrupting): Just a moment, until I see what it is. Off the record.

(Discussion off the record.)

12796

*Dr. Lazare Teper—For Commission—Direct.**By Mr. Haycraft.*

Q. I show you Commission's Exhibit 1045 and ask you where you obtained that paper? A. This page is entitled—

Trial Examiner Diggs (interrupting): Just tell where you got it.

The Witness: This represents data gathered by the "Code Authority."

*By Mr. Haycraft.*

Q. Did you prepare this paper yourself? A. Yes.

12797

Q. Where did you get the data from which the paper was prepared? A. Every week during the existence of the N.R.A.—

Trial Examiner Diggs (interrupting): Did you get it from the N.R.A.?

The Witness: Yes. But I am afraid that if I say yes or no, the answer is going to be incomplete.

*By Mr. Haycraft.*

Q. How did you get it? A. Every week during the existence of the Code—

Mr. Weisman (interrupting): I object to that.  
Trial Examiner Diggs: Off the record.

(Discussion off the record.)

12798

*By Mr. Haycraft.*

Q. How did you get this data? A. Every week during the period of the Code's existence while labels were sold, we had received in our office a written report of the N.R.A., on the official stationery of the N.R.A.—I don't recall right now, but I think it was under the signature of the official in charge.

Mr. Weisman: Were you there then with your organization?

The Witness: I came later.

Mr. Weisman: That is enough, Mr. Examiner, in itself to have it excluded.

Trial Examiner Diggs: Does that answer your question, Mr. Haycraft?

*By Mr. Haycraft.*

Q. In other words, did you prepare this from the data which you obtained from the N.R.A.?

Mr. Weisman: I object to the question.

Trial Examiner Diggs: Off the record.

(Discussion off the record.)

12800

A. Yes.

*By Mr. Haycraft.*

Q. Calling your attention to Commission's Exhibits 1044-A and 1044-B, I ask you where the data came from that is contained in that exhibit? A. There are two sorts of data on these sheets. In the first place the volume of business is marked on these sheets for a certain number of firms, as well as the labels purchased by these firms during the year 1934.

Q. Where did you get the label information?

Mr. Weisman: Just a moment. I move to strike out that previous answer as irresponsible to the question.

12801

Trial Examiner Diggs: Off the record.

(Discussion off the record.)

Trial Examiner Diggs: I overrule the objection.

12802

*Dr. Lazare Teper--For Commission--Direct.**By Mr. Haycraft.*

Q. Where was the label information obtained? A. From the Code Authority records.

Q. Were they taken from this Commission's Exhibit 1045? A. No. These two had nothing to do with each other. It has been copied directly from the Code Authority records by one of the men in my office.

Q. Where were the Code Authority records, at the time they were copied by your man? A. At the time, they were in the Code Authority office.

Mr. Weisman: I object to that.

Trial Examiner Diggs: Off the record.

(Discussion off the record.)

12803

*By Mr. Haycraft.*

Q. Who, in your organization, made the compilation or tabulation from the Code Authority records? A. Do you want the name of the person?

Q. Yes. A. I am afraid that offhand I could not recall. I have a memorandum at my office, because it had been quite some time ago.

Trial Examiner Diggs: Do not let us have a long time about it. Do you know or don't you know?

The Witness: Offhand I would not want to commit myself.

12804

*By Mr. Haycraft.*

Q. Who made this Exhibit 1044-A and 1044-B? A. A number of people were working on it, including myself. I have checked over all of the figures.

Q. Did you check it against the original sources? A. These figures have not been checked by me against the original sources. They have been checked by the individuals employed in the office.

*Dr. Lazare Teper—For Commission—Direct.*

12805

Q. In other words, you relied upon the individuals who did the work? A. That is right. It is impossible to make field surveys with the director going out.

Q. That is true on both pages? A. Yes, that is true. Both pages are part of the one thing.

Trial Examiner Diggs: What exhibit is that?

The Witness: Exhibit 1044-A and B.

*By Mr. Haycraft.*

Q. How did you determine the price lines indicated across the top? A. Each firm was classified according to the Code Authority classification.

Q. Do you have a copy of the Code Authority classification showing the classification that they gave at that time?

A. For the individual firms?

Q. Yes. A. May I speak off the record?

Trial Examiner Diggs: Off the record.

(Discussion off the record.)

*By Mr. Haycraft.*

Q. Showing you Commission's Exhibit 1046, what is that paper? What is the source of it? A. This table represents the final operations in compiling the volume of business in 1934. You have there the number of labels—

Mr. Weisman (interrupting): I object to that.

Trial Examiner Diggs: Off the record.

(Discussion off the record.)

The Witness: The data was gotten from these two sheets.

Trial Examiner Diggs: What are these two sheets?

The Witness: 1044 and 1045.

12806

12807

12808

*Dr. Lazare Teper—For Commission—Direct.**By Mr. Haycraft.*

Q. The number of labels were taken from what exhibit?

A. From Exhibit 1045.

Q. The average price figures were taken from what exhibit? A. 1044?

Q. Referring to Exhibit 1046, where did you obtain the data listed in the average price column? A. This exhibit was taken from 1044 and represents a ratio—

Mr. Weisman (interrupting): No, he did not ask you that.

Trial Examiner Diggs: Where did you get it?

12809

*By Mr. Haycraft.*

Q. What does Exhibit 1044 represent?

Mr. Weisman: I object to that. The exhibit can speak for itself.

Trial Examiner Diggs: I will let him explain the exhibit. What does it represent?

The Witness: It represents the ratio between the dollar sales and label sales.

*By Mr. Haycraft.*

Q. In Commission's Exhibit 1044 and in Commission's Exhibit 1045, where did you get the figures then in column headed "sales" in Commission's Exhibit 1046? A. It is a product of the ratio I mentioned by the number of labels purchased in the specific price line as classified by the Code Authorities.

12810

Q. In other words, you have taken the average price? A. That is right.

Q. Multiplied that by the number of labels? A. Yes.

Q. And you get the volume of sales? A. That is right.

Trial Examiner Diggs: Off the record.  
(Discussion off the record.)

*Dr. Lazare Teper—For Commission—Direct.*

12811

*By Mr. Haycraft:*

Q. Will you testify as to the procedure followed in arriving at the average price in the second column of Exhibit 1046? A. If I may ask a question?

Trial Examiner Diggs: Off the record.  
(Discussion off the record.)

A. In order to secure the dollar volume of business with the label sales as the indication of volume, we had to devise some method whereby we could translate label sales into dollar units. The procedure was as follows: If, for example, we knew what the ratios were for the industry as a whole between the sales volume and the number of labels sold in a specific price line, then we could take that figure and multiply it by the number of labels. It stands to reason that we could get the sales volume back. However, we could not do it for the industry as a whole, therefore we had to use the procedure known as sampling. By that method we were able to secure the dollar volume and the sales of labels purchased for the individual concerns. The size of that sample would indicate that whatever information was gotten was apt to represent the industry as a whole. This data for dollar sales and labels was broken up by price lines in accordance with the classification followed by the Code Authority.

12812

*By Mr. Haycraft:*

12813

Q. Are you referring now to Exhibit 1044? A. And the results of it have been written into Exhibit 1044.

Q. Go ahead. A. We take one price line, as an example in the \$4.75, all labels bought by the manufacturer in the samples have been totaled. Every one of the total dollar volumes has been totaled and the ratio between the dollar volume and the labels purchased has been secured. In this case it amounted to \$4.72.

12814

*Dr. Lazare Teper—For Commission—Direct.*

Q. Where do you find that on Exhibit 1046? A. You will find it on the 6th line of Exhibit 1046.

Q. And the price line in that exhibit is what? A. \$4.75.

Mr. Weisman: If your Honor please, I object to this procedure because—

Trial Examiner Diggs: Off the record.  
(Discussion off the record.)

Mr. Haycraft: I ask to have these papers marked for identification.

(Papers referred to were marked for identification Commission's Exhibits 1047-A and B, 1048 and 1049.)

12815

*By Mr. Haycraft.*

Q. I now show you Commission's Exhibits 1047-A and B, 1048 and 1049 for Identification and I ask you if they are the work sheets used by you in preparing Commission's Exhibit 1031? A. Yes, sir.

Q. I will ask you whether or not some of the data contained in the Commission's Exhibits 1047, 1048 and 1049 for Identification, was taken from the same sources as Commission's Exhibits 1044, 1045 and 1046? A. In part.

Q. The calculations being based thereon, is that correct? A. That is right.

Trial Examiner Diggs: Off the record.  
(Discussion off the record.)

12816

*By Mr. Haycraft.*

Q. I will ask you where the data which you have referred to and which you used in preparing Commission's Exhibits 1044, 1045 and 1046, 1047, 1048 and 1049 for Identification, are data which you obtained and used in the ordinary course of your duties as research director of the Joint Board of Dressmakers Unions? A. Yes, sir.

Mr. Haycraft: That is all.

Trial Examiner Diggs: Off the record.

(Discussion off the record.)

Trial Examiner Diggs: Are you through with this witness?

Mr. Haycraft: Yes.

Trial Examiner Diggs: Any cross-examination?

Mr. Weisman: I would first like to make my motions and then waive my cross-examination.

Trial Examiner Diggs: All right.

Mr. Weisman: Before proceeding, your Honor, I would like to move to strike from evidence Exhibits 1044-A and B, 1045 and 1046 which were conditionally admitted, and Commission's Exhibit 1043, all of which were conditionally admitted into evidence, upon the ground that there is not a scintilla of evidence—I won't give the reasons.

12818

Trial Examiner Diggs: I sustain the motion.

Mr. Martin: If your Honor please, before you rule—

Trial Examiner Diggs (interrupting): Off the record.

(Discussion off the record.)

Trial Examiner Diggs: The exhibits are stricken.

Mr. Weisman: May I make the further motion that all of the testimony of this witness, and the manner of his figuring them up, and the statement of the mechanics, so be likewise stricken from the record.

12819

Trial Examiner Diggs: I am going to let the mechanics stay in because it may save us a lot of time in the future in case I am overruled and we should come back to it.

Mr. Weisman: I do not care to cross-examine this witness.

12820

*Proceedings Before Examiner.*

Trial Examiner Diggs: Off the record.

(Discussion off the record.)

Trial Examiner Diggs: This hearing is adjourned at 3.10 P. M., and will be resumed at 2 o'clock P. M., of October 18, 1937, at 45 Broadway, New York, Room 500.

(Thereupon, at 3.10 P. M. the hearing is adjourned as noted.)

12821

Room 500, 45 Broadway,  
New York, N. Y.,  
November 10, 1937.

Met, pursuant to adjournment at 3.30 o'clock P. M.

Before: CHARLES F. DIGGS, *Trial Examiner.*

APPEARANCES:

REUBEN J. MARTIN, attorney for the Federal Trade Commission.

MELVIN A. ALBERT and HERBERT KELLER, attorneys for respondents, 1450 Broadway, New York, N. Y.

12822

Trial Examiner Diggs: You may proceed, gentlemen.

Mr. Martin: Mr. Bergdahl, will you come around here please, sir.

Trial Examiner Diggs: This witness has already been sworn?

Mr. Martin: Yes, your Honor, this witness has testified before and has been sworn.

Trial Examiner Diggs: You may proceed.

HERBERT O. BERGDAHL, heretofore produced sworn and examined as a witness on behalf of the Commission, being recalled, testified further as follows:

*Direct examination by Mr. Martin.*

Q. Mr. Bergdahl, at the last hearing of this case you testified that you had formed an opinion as to the volume of business done by the entire dress industry, and also had formed an opinion as to the volume of business that was done by the members of the Fashion Originators Guild of America, and you testified that you had made a memorandum of that showing that opinion, which is Commission's Exhibits 941 and 942 for identification. Now, since the last hearing of this case, due to the unfortunate death of the Trial Examiner who was presiding over the case, we have had a new Trial Examiner. Commission's Exhibits 941 and 942, which is your opinion, have not been introduced in evidence and I would like for you, for the benefit of the Trial Examiner, to state on what you base your opinion as shown in Commission's Exhibits 941 and 942.

12824

Mr. Albert: That is objected to, if it please the Court, as being repetitious, entirely immaterial and irrelevant, as having once been passed upon by the previous Examiner.

Trial Examiner Diggs: I overrule the objection. You may have an exception.

12825

Q. Will you go ahead, Mr. Bergdahl, and state for his Honor just what factors you took into consideration, what study, what research, on what you base your opinion as expressed in these exhibits? A. Well, prior to the time this hearing began, I had several years of experience with dress manufacturers and the dress industry both in low and better price lines, particularly since 1929. I have been in charge of a force of buyers—while it may not have been

12826

*Herbert O. Bergdahl—For Commission—Direct.*

the largest in the field, I think it is—whose duty it is to survey the market from top to bottom and keep the concerns whom we serve informed as to the conditions in the dress market, as to style and quality of merchandise and amount of merchandise bought and sold, and so forth. Now, at the time our stores became red carded it became my duty to find sources of supply for our stores that had been excluded from the F.O.G.A. houses. So we made a very extensive survey of the market to find all available houses. We have fifteen dresses—fifteen buyers and assistant buyers covering the dress market at various price ranges from \$4.75 up, not including the basement buyers. I asked them to find all non-Guild houses that it was possible to find that we could do business with. This list was revised from time to time. Our buyers found it very difficult to obtain merchandise, as I have testified previously, and our store management—

12827

Mr. Albert: If it please the Court.—

Trial Examiner Diggs: I do not think you can show the mental operation of somebody else.

The Witness: How do you mean?

(Discussion off the record.)

The Witness: I will say we had difficulty in obtaining merchandise.

(Discussion off the record.)

12828

The Witness: I got it from my buyers. I got it from conversation with manufacturers in the market and also by asking special agency, Harris & Serwer, to prepare a survey of the dress manufacturers in the market to tell us just exactly what proportion of the business was done in Guild houses as compared with the industry, according to the best figures and statistics we could obtain. Now, that is how we obtained the information. After getting the information, my own information and his information, we compared notes and formu-

*Herbert O. Bergdahl—For Commission—Direct.*

12829

lated an opinion as to what the comparative volumes were in the non-Guilds as compared with the Guild houses, and those are the figures that I handed to you here last time.

Trial Examiner Diggs: By that you mean figures which appear in Commission's Exhibits 941 and 942-A, 942-B, 942-C, 942-D, 942-E, 942-F, 942-G, 942-H, 942-I and 942-J?

The Witness: Yes.

Q. Referring to Commission's Exhibit 941, can you be any more specific, Mr. Bergdahl, as to what the figures for the entire industry are based on? A. My recollection is that these figures are the figures that were given out by the N.R.A. as a result of the sale of labels to dress manufacturers.

12830

Q. And the figures as to the members of the Guild are the result of what? A. I explained that already.

Q. And Commission's Exhibits 921 and 942-A to 942-J represents your opinion as to the volume of business done by the industry and, as to the volume of business done by the F.O.G.A., is that correct? A. It did, yes.

Mr. Martin: If your Honor please, I now offer in evidence Commission's Exhibits 941 and 942-A to 942-J, inclusive.

Mr. Albert: That is objected to, if it please the Court, on the ground that no proper foundation whatsoever has been laid demonstrating the efficacy or the authority or the accuracy of these figures, any sales figures, and this offer of proof of these figures is more preposterous than the figures that were offered through Dr. Teper.

12831

Trial Examiner Diggs: I am going to overrule the objection and admit the exhibits in evidence. But in explanation of this ruling I want the record to show that this exhibit was prepared by the wit-

12832

*Herbert O. Bergdahl—For Commission—Direct.*

ness, as testified to by him, from certain data and information given him by a service agency, that some of the data was taken from certain circulars put out by the N.R.A. and that certain other information was acquired by conversation had with certain persons who have been indicated by the witness; and I think that all of these methods used in the preparation of these exhibits suggest that it is not entitled to be admitted in evidence—that is, would not be entitled to be admitted in evidence if we were sitting as a court, because there is no opportunity to cross-examine the representatives of the agency or the persons connected with the N.R.A. who prepared the data, but I am admitting it in order that the Commission may, if it so desires, have before it this exhibit and the information therein contained, and in the event that the Commission should determine that this exhibit is not entitled to be admitted in evidence, they will disregard it; but if I were to refuse its admission obviously the Commission would not have an opportunity to consider it. And so I have undertaken to adopt the least of two evils, and counsel for the respondents may have an exception.

12833

(The certain papers referred to, heretofore marked for identification Commission's Exhibits 941 and 942 were thereupon received in evidence as Commission's Exhibit 941 and Commission's Exhibits 942-A, 942-B, 942-C, 942-D, 942-E, 942-F, 942-G, 943-H, 942-I and 942-J, respectively.)

12834

Mr. Martin: I have no further questions.

Trial Examiner Diggs: You may cross-examine.

*Cross-examination by Mr. Albert*

Q. Mr. Bergdahl, have you the report given to you by Harris & Serwer? A. No, not here.

Q. Well, where in Exhibit 941 and Exhibit 942 is the report reflected, on what page? A. Well, in all of it.

Q. Is there any one figure in Exhibits 941 and 942 that you can point to—that is, a figure taken from the Harris & Serwer report? A. The report as given to you is the result of, as I stated previously, I think in collaboration between Mr.—

Q. Can you put your finger on a single figure in there which you got from this concern? A. I can put it on the first page.

12836

Q. What figure? A. Take the first page.

Q. What figure in there is a figure given to you by Harris & Serwer? A. Take \$41,870,000.

Q. What does that reflect? A. The amount of business done by the members, affiliates and protective affiliates of the F.O.G.A. from 16.75 and over.

Q. What investigation did you make of the accuracy of that figure? A. My knowledge of the industry.

Q. I asked what investigation you made, Mr. Bergdahl; I didn't ask for your conclusion.

Trial Examiner Diggs: Did you make any investigation, as a matter of fact?

The Witness: Yes, I did.

Trial Examiner Diggs: What was it?

12837

The Witness: I investigated the number of houses outside of the Guild with whom I could do business and found that they were so small, that the volume of business that you could do was so small, it was insignificant.

Q. Now, Mr. Bergdahl, will you please tell me what investigation you made to determine whether or not the sum

12838

*Herbert O. Bergdahl—For Commission—Cross.*

of \$41,870,000 reflected the amount of business therein stated to have been done? A. I think I have explained that.

Q. Have you given the best explanation that you possibly can? A. Yes.

Q. Now, is that figure of \$41,870,000 and 16.75 and over taken from Harris & Serwer reports? A. Yes.

Q. You are positive of that? A. Yes.

Q. Where is that Harris & Serwer report? A. I don't know now where it is.

Q. Is there any place that you know of that we can get that report to check on that figure?

12839

Trial Examiner Diggs: The witness says he doesn't know where it is.

Q. You know where Harris & Serwer is? A. Yes.

Q. Have they got it? A. It has an office in New York City—no, I think not.

Q. Has it been destroyed? A. It may have. However, I will not say. I will look for the figures and see.

Q. You knew you were coming here to-day to testify on the figures, did you not? A. I knew I was to come here to testify.

Q. You didn't know what you were to testify on? A. No.

Q. Who are Harris & Serwer? Do you know what business they are in? A. Yes.

12840

Q. What is the business? A. I think I know what their business is. I think they make surveys of market conditions for clients; that a part of their work is also doing advertising for clients. They have given reports out to the trade from time to time, as far as I know, stating conditions in the market and so forth.

Q. Mr. Bergdahl, did you make any estimate of total volume of business done in the industry or in the Guild

*Herbert O. Bergdahl—For Commission—Cross.*

12841

houses for 1934? A. Well, last Spring. I did. Last year when I was testifying, as I recall, I had arrived at a figure.

Q. When you were testifying where? A. Here.

Q. Did you have any knowledge of the figures that were prepared in the case of Filene against the Fashion Originators Guild of America? A. No, sir.

Q. None whatsoever? A. No, sir.

Q. Did you know that figures had been presented from Harris & Serwer—

Mr. Martin: That is objected to.

Trial Examiner Diggs: The objection is sustained.

(Discussion off the record.)

12842

Q. Prior to preparing Exhibits 941 and 942, Mr. Bergdahl, did you in any way use the figures in the Filene case as a possible—

Mr. Martin: That is objected to.

Trial Examiner Diggs: Objection sustained. I have already indicated I am not going to have the Filene case drawn in this case.

Mr. Albert: Exception.

Q. Now, who did you have a conversation with with respect to the Guild figures? A. I didn't have a conversation with anybody with respect to Guild figures—the Guild figures, as you stated it.

12843

Q. You have testified that you had certain conversations with members of the Guild in order to determine their total volume; isn't that so? A. Regarding their own volume.

Q. Yes. Well, with whom did you have conversations regarding their own volume?

Mr. Martin: If your Honor please, I object—

12844

*Herbert O. Bergdahl—For Commission—Cross.*

Trial Examiner Diggs: I overrule the objection. You have brought up this question. I think he is entitled to go into it.

A. Well, that happened about a year ago.

Trial Examiner Diggs: Do you remember now?

The Witness: I remember some of them.

Trial Examiner Diggs: State them.

Q. Who were some of them? A. I think Willie Bass.

Q. When was that conversation? A. I could not tell you. It was in 1936 some time.

12845

Q. The Spring or the Fall? A. I would say some time—

Trial Examiner Diggs: I am not going down into this minute detail about this thing—I am not going to let you ask who the people were.

The Witness: In the Summer, I think—let me see now—in the Spring of 1936, maybe late in the Fall—no, it was the Spring and early Summer of 1936.

Q. Yes. Who else did you speak with? A. Oh, I think I spoke with Joe Halbert.

Q. When did you speak with him? A. At the same time.

12846

Q. Summer of 1936?

Trial Examiner Diggs: He said the same time.

The Witness: I believe Milton Altmark. I think Al Lasher.

Q. When was the time with Mr. Altmark? A. All of these were spoken to at that time, as I recall.

Q. All of them in approximately the latter part of the Spring and the Summer of 1936?

Mr. Martin: I object to it. It is needless repetition.

Trial Examiner Diggs: Sustained.

The Witness: J. M. Silverman. Well, those are some that I remember.

Q. Do you remember any others? A. No, I don't at the present time.

Q. Do you say now that you spoke with everyone that is reflected in Commission's Exhibits 941 and 942.

Mr. Martin: Objected to. The witness has not stated that.

Mr. Albert: I am asking him if he did.

A. I did not speak to everyone in the record.

Q. Now, with respect to those houses whose figures are reflected in Exhibits 941 and 942, whom you did not speak to, how did you obtain their figures? A. Well, from talking to my buyers, who had a pretty good idea of what manufacturers are doing.

Q. Which buyers gave you that information? A. Well, I have fifteen buyers. I discussed this with them many times.

Q. There are many more than that with whom you do business, aren't there? A. Yes, certainly. I am speaking of my own buyers. In fact in none of this testimony here—I think you are confused—none of those I had reference to are store buyers, probably several hundred.

Q. You are referring to buyers on the A.M.C. staff? A. My staff.

Q. What are the names of those buyers? A. Mrs. Hawkins, Miss Fowler, Miss Magnee, Miss McVicker, Miss Ogle, Miss Evans, Mr. Schmeltzer. That is all—and their assistants, but those are the main ones.

Q. So out of fifteen buyers you only spoke with seven? A. No.

12850

*Herbert O. Bergdahl—For Commission—Cross.*

Q. Who else did you speak with? A. Leave it that way if you want it—seven I spoke to.

Q. Did you consult your other eight buyers? A. No.

Q. How long has Miss Hawkins been with your concern?

Mr. Martin: Objected to as irrelevant.

Trial Examiner Diggs: Objection sustained.

Mr. Albert: Exception.

Q. How long has Miss Flower been with your concern?

Mr. Martin: The same objection.

12851

Trial Examiner Diggs: I assume that you are repeating each one, and the same ruling applies to each one without encumbering this record.

Mr. Albert: Exception.

Q. What explanation did Miss Hawkins make with respect to the figures that she gave you?

Mr. Martin: Objected to.

Trial Examiner Diggs: The objection is overruled.

A. I can't answer it—

Q. Can you answer it with respect to any of the other six with whom you testified you had a conversation? A. They were in the market constantly shopping dress manufacturers.

12852

Q. What firms, members of the Guild, did Miss Hawkins visit, do you know?

Mr. Martin: Objected to.

Trial Examiner Diggs: The objection is overruled.

Mr. Martin: If your Honor please, this is—

Trial Examiner Diggs: I am overruling your objection for this reason: that you have opened up

this subject and said this witness—that he testified he received certain information from certain people, and it is proper on cross-examination to have his knowledge and all the facts concerning it.

A. I don't know; I couldn't answer that question.

Q. Would your answer be the same with respect to the other six of whom you have testified? A. Yes.

Q. Is it customary procedure for your buyers to ask manufacturers the total volume of their business? A. That is frequently the subject of conversation, whether it is asked or not.

Q. So that the figures given you by your buyers you have obtained as the result of its being the subject of conversation rather than as the result of a specific request?

12854

A. I didn't say that.

Q. Would you explain yourself, please?

Trial Examiner Diggs: I think this witness has stated the facts. He has stated that he conferred with his buyers. He talked to the trade. He saw certain data prepared by the N.R.A. He consulted and received information from some service agency. Now, he stated all those various things.

Q. Mr. Bergdahl, will you be kind enough to bring in on the adjourned date the Harris & Serwer figures which you have referred to, if you can locate them or have them, and in addition the resources compiled by the A.M.C. which you have referred to in your testimony as having been compiled by the red carding of the A.M.C. stores? A. If we have those lists, your Honor, I think it will be all right to bring them in. I wouldn't know until I look at them, if we have them or not—I think it will be all right to bring them in. I would like to ask counsel about that.

12855

(Thereupon, at 5.30 o'clock P. M., November 10, 1937, the hearing was adjourned to reconvene on November 12, 1937 at 10 o'clock A. M.)

12856

Herbert O. Bergdahl--For Commission--Cross.

Room 500, 45 Broadway,  
New York, N. Y.,  
November 12, 1937.

Met, pursuant to adjournment, 10 A. M.

Before: CHARLES F. DIGGS, *Trial Examiner.*

APPEARANCES:

REUBEN J. MARTIN, attorney for the Federal Trade Commission.

12857

MELVIN A. ALBERT and HERBERT KELLER, attorneys for respondents, 1450 Broadway, New York, N. Y.

Trial Examiner Diggs: You may proceed.

HERBERT O. BERGDAHL, heretofore produced, sworn and examined as a witness on behalf of the Commission, being recalled, testified as follows:

*Cross-examination (continued) by Mr. Albert.*

Q. Now, Mr. Bergdahl, would you be good enough to tell me how long it took you to prepare Exhibits 941 and 942?

12858

Mr. Martin: Objected to on the ground that it is irrelevant and immaterial.

Trial Examiner Diggs: Objection sustained.

Q. When did you first start preparing Exhibits 941 and 942?

Mr. Martin: Objected to.

Trial Examiner Diggs: Sustained.

Q. Did you discuss the preparation of Exhibits 941 and 942 with Mr. Martin or Mr. Haycraft?

Mr. Martin: Objected to.

Trial Examiner Diggs: I will overrule that.  
The answer is yes or no.

A. No.

Q. Did you have any conversations with Mr. Haycraft or Mr. Martin prior to the original offer of Commission's Exhibits 941 and 942?

Mr. Martin: Objected to.

Trial Examiner Diggs: The objection is sustained.

12860

Q. Were you asked by Government's counsel to prepare Exhibits 941 and 942?

Mr. Martin: Objected to.

Trial Examiner Diggs: Sustained.

Q. For what purpose did you prepare Commission's Exhibits 941 and 942? A. We prepared it, as I think I have already explained, for the purposes of determining how much of the market in the better end was controlled by the Guild houses.

Q. Now, how many—withdrawn. In the course of that investigation how many houses did you discover were not Guild houses? A. I couldn't tell you.

12861

Q. Have you any idea at all? Can you give me some rough estimate? A. No.

Q. Did you, Mr. Bergdahl, have anything to do with the preparation of the list of resources gotten up by the A.M.C. in or about April of 1936?

Mr. Martin: Objected to as improper cross-examination.

12862

*Herbert O. Bergdahl—For Commission—Cross.*

Trial Examiner Diggs: I sustain the objection for the reason that the inquiry concerning which counsel is now asking the witness may have formed a part, the basis for his preparation of Commission's Exhibits 941 and 942. The fact of the matter is that there is nothing contained in that particular inquiry which is reflected in either of these exhibits, and therefore it is not proper cross-examination. You may have an exception.

12863

Q. Mr. Bergdahl, on your Exhibit 941—pardon me, Commission's Exhibit 941, you have a figure that the Guild members did approximately \$41,870,000 worth of business in the 16.75 and over price class and that in that price class the entire industry did \$45,500,000 worth of business, showing that the balance of the industry did approximately only \$4,000,000 worth of business in the 16.75 class. Is that correct as a matter of computation? A. That is right.

Q. Now, then, in reaching that figure of \$4,000,000, how many non-Guild houses doing 16.75 and over, did you take into consideration? A. All that we can find at the time and we made a thorough search, I think.

Q. Since preparing Commission's Exhibits 941 and 942 have you made any further search to determine its accuracy?

12864

Mr. Martin: Objected to.

Trial Examiner Diggs: I will overrule that.

A. I don't believe that we have. I might answer it further this way: that I did the best I could at the time this was prepared—it may have been afterward—to check available sources and knowledge of Guild houses and some conversation that I had with the Guild members, as I stated at the last hearing, to determine whether or not this was accurate.

Q. Well, in attempting to arrive at the figure of \$4,000,000 for the rest of the industry, did you take into consideration Commission's Exhibits 450-H to P in your listing of non-Guild houses?

Mr. Martin: Objected to. He is trying to go back at the same question in a different form.

Trial Examiner Diggs: The objection is overruled.

Mr. Martin: Now, if your Honor please, I wish to renew my objection to that. It is exactly the same question that your Honor ruled on a few minutes ago.

Trial Examiner Diggs: Objection is overruled. 12866  
You may answer, Mr. Witness.

A. I don't believe that this particular list was considered, although the extent of the production of dresses by some of the manufacturers on this list probably was considered in coming to the final conclusion.

Trial Examiner Diggs: The question is whether you used that list as a part of the data from which you made up Commission's Exhibits 941 and 942?

The Witness: I could not honestly say that, sir. I don't know.

Q. Well, now, you sent out Commission's Exhibit 450, did you not? A. It was sent out by our office, yes. 12867

Q. And it was compared by your office? A. Yes, sir.

Mr. Martin: Objected to.

Q. Well, now, wasn't the best evidence of the existence of non-Guild houses as a list for the purpose of arriving at their total volume your own list?

Mr. Martin: Objected to as improper cross-examination.

12868

*Herbert O. Bergdahl—For Commission—Cross.*

Trial Examiner Diggs: I am going to sustain the objection because you are asking this witness to make a determination now concerning a rule of evidence.

Q. Mr. Bergdahl, for your purposes of preparing Commission's Exhibits 941 and 942, was not your own list of resources, Commission's Exhibit 450, the best source for determining the number of non-Guild houses upon which to predicate the total volume of such houses?

Mr. Martin: Objected to.

12869

Trial Examiner Diggs: I am going to sustain that. You are calling upon this witness to make a conclusion as to the best and what is not the best.

Q. Can you give me, Mr. Expert, an estimate of the volume of the Delphi?

Mr. Martin: Objected to.

Trial Examiner Diggs: I sustain the objection.

Q. Can you give me an estimate of the volume of the Delphi? A. No, sir.

Q. Can you give me an estimate of the volume of Colin Frocks for 1935? A. No, sir.

12870

Q. From the research that you have made and from the study that you have made—can you give me an approximate estimate of the total volume of Martha Duff for 1935? A. At this time, no sir.

Q. When did you last know the total volume?

Mr. Martin: Objected to.

Trial Examiner Diggs: Let us finish the question.

Q. (Continuing) Total volume of the income tax figures of the United States.

*Herbert O. Bergdahl—For Commission—Cross.*

12871

Mr. Martin: Objected to as irrelevant and immaterial and no evidence in the record that this witness knows anything about the income tax figures.

Mr. Albert: Conceded—withdrawn.

Q. Now, Mr. Bergdahl, can you tell me when you last knew the total volume for 1935 of Colin Frocks?

Mr. Martin: Objected to as irrelevant and immaterial when he knew.

Trial Examiner Diggs: Objection sustained.

Q. Did you know the total volume for 1935 of Colin Frocks at the time that you prepared Commission's Exhibits 941 and 942?

12872

Mr. Martin: Objected to. He has already answered.

Trial Examiner Diggs: The objection is overruled because the witness is now asked whether he knew at the time he prepared it. The other question was whether he knew.

A. I am not sure that I did. I may have had an opinion. I don't recall.

Q. At the time that you prepared Commission's Exhibits 941 and 942, did you know the approximate value for 1935 of Shirley Adelman?

12873

Trial Examiner Diggs: Counsel is now reading from a long list of non-members of the Guild, which appears to be in Commission's Exhibit 450, and has already called the witness' attention to several firms. I am not going to permit the counsel to ask the same questions respecting each of these firms, because it is very evident from the witness' answer that he at the present time has no recollection

12874

*Herbert O. Bergdahl—For Commission—Cross.*

which is now sought to be elicited. Counsel may ask him a general question as to whether he knows the figures concerning any of these as a group, but I am not going to permit a detailed examination of this long group of concerns.

Mr. Albert: Exception.

Trial Examiner Diggs: You may have an exception.

12875

Q. Mr. Bergdahl, did you at the time of the preparation of Commission's Exhibits 941 and 942 make any estimate of the total volume for 1935 of the non-Guild houses contained in Exhibits 450-H to P, as prepared by the A.M.C.?

Trial Examiner Diggs: That is a yes or no answer.

A. We made an estimate, yes.

Q. What was the estimate? A. About \$4,000,000.

Q. In making that estimate what did you find was the number of non-Guild houses and that was contained in Commission's Exhibits 450-H to P? A. I don't recall.

Q. Did you attempt to enumerate, in so far as total number is concerned, the non-Guild houses contained in Commission's Exhibits 450-H to P? A. No, sir.

12876

Q. Well, without knowing the number approximately of non-Guild houses, how could you make an estimate of their total volume? A. I didn't say I didn't know.

Q. What did you say? A. You have it on the record.

Mr. Albert: May I ask for common courtesy from the witness, your Honor?

Trial Examiner Diggs: I think the record speaks for itself.

(Remarks of counsel for respondents omitted from the record at direction of Trial Examiner.)

*Herbert O. Bergdahl—For Commission—Cross.*

12877

Q. Now, Mr. Bergdahl, do you not now as a matter of fact know that there are over 100 non-Guild houses listed in Commission's Exhibits 450-H to P?

Mr. Martin: Objected to as irrelevant and immaterial.

Trial Examiner Diggs: Objection sustained. The exhibit speaks for itself. Whether it is known by the witness or not is immaterial.

Q. I show you Commission's Exhibits 450-H to P and ask you how many non-Guild houses are contained in that list?

Mr. Martin: Objected to. That is irrelevant.

12878

Trial Examiner Diggs: Objection sustained. That is the same question and counsel will not undertake to ask the question twice.

(Remarks of counsel for respondents omitted from the record at direction of Trial Examiner.)

Q. Mr. Bergdahl, since there are over 100 non-Guild houses listed in the A.M.C. list known as Commission's Exhibits 450-H to P, from your knowledge of the industry and the research that you have made can you give me an approximate of the amount of volume of those houses during 1935?

Mr. Martin: Objected to. He has already given it.

12879

Trial Examiner Diggs: The shortest cut will be to take a yes or no answer.

A. Yes.

Q. What is that volume? A. I estimate that as 4,000,000 or thereabouts, in the price line from 16.75 up. I would also like to make it clear that some of the houses that you refer to also make merchandise below 16.75 and

12880

*Herbert O. Bergdahl—For Commission—Cross.*

that is why I mentioned that—that in the brackets from 16.75 up. My estimate that these houses and any others that may not be on this list, that the volume would approximate \$4,000,000 or less.

Q. Now, is that your personal estimate or is that predicated upon the figures which you have previously told us you received from the N.R.A. from Harris & Serwer and from buyers? A. That is based on every conceivable step of information that I could scratch together in several months of work on this subject during the time that I was preparing this.

12881

Q. Did you scratch together any figures from the National Credit Association? A. No.

Q. Are you positive of that? A. I couldn't answer that.

Q. Don't you know from whom you obtained the figures, whether or not you obtained them from an organization known as the National Credit Association? A. I told you whom I obtained the figures from. It is in the record.

Q. Did you obtain any figures—question withdrawn. Is the A.M.C. a member of the National Credit Association?

Mr. Martin: Objected to.

Trial Examiner Diggs: Objection sustained.

Q. Is the Retail Research Bureau a member of the National Credit Association?

12882

Mr. Martin: Objected to.

Trial Examiner Diggs: Objection sustained.

Q. Have you any connection with any organization that is a member of the National Credit Association?

Mr. Martin: Objected to.

Trial Examiner Diggs: Sustained.

*Herbert O. Bergdahl—For Commission—Cross.*

12883

Q. Do you know what the National Credit Association is?

Mr. Martin: Objected to.

Trial Examiner Diggs: Sustained. Now, let me say to counsel right here that this whole line of cross-examination after my having ruled on two or three questions is subject to the same objection and to the same ruling, and it will be futile for you to follow it up any further.

Q. Now, as a matter of fact, Mr. Bergdahl, didn't you obtain some figures from National Credit Association?

Mr. Martin: Objected to.

12884

Trial Examiner Diggs: The witness has already answered that. Objection sustained.

Mr. Albert: Exception.

Trial Examiner Diggs: You may have it.

Q. Did you obtain any figures from the Department of Commerce?

Mr. Martin: Objected to.

Trial Examiner Diggs: I will overrule that.

A. I did not.

Q. Did you obtain any figures from the Harvard Bureau of Research? A. I did not.

Q. Did you obtain any figures from the Columbia Bureau of Research? A. I did not.

12885

Q. Did you make any attempt—

Trial Examiner Diggs: I will ask a question.

*By Trial Examiner Diggs.*

Q. Did you obtain any figures from any other sources than you already testified to in your cross-examination?

A. No, sir.

12886

*Herbert O. Bergdahl—For Commission—Cross.*

Trial Examiner Diggs: Now, we will have no more question about any other sources.

Q. Now, on Commission's Exhibits 941-D to F, inclusive, I notice some pencil notation. Do you know what they are?

Trial Examiner Diggs: Counsel for the Commission has just stated that those notes were made by him in order to check up the record and therefore he will now eliminate them from the exhibit.

Mr. Albert: I wish to note my exception to any physical mutilation of a record in evidence.

12887

Trial Examiner Diggs: All right, you may have it. Just eliminate them from the exhibit.

Q. Now, Mr. Bergdahl, will you tell me in what price lines Aarons, Bernstein & Aarons, Inc., makes dresses?

Mr. Martin: Objected to as being irrelevant and immaterial.

Trial Examiner Diggs: I am going to sustain that objection because otherwise this examination will be interminable. It has nothing to do with the correctness of the estimates made by this witness and it opens a field that would be inexhaustible. You may have an exception.

12888

Q. Don't you know as a matter of fact Aarons, Bernstein & Aarons, doesn't make any dresses?

Mr. Martin: Objected to.

Trial Examiner Diggs: Overruled.

A. At the present time I don't recall what they made in 1935.

Q. Did you know in 1935 what they made? A. At the time we prepared this compilation I think we took into consideration all those things. I am sure we did.

*Herbert O. Bergdahl—For Commission—Cross.*

12889

Q. And in 1935 when you prepared this record it was your belief that Aarons, Bernstein & Aarons did \$400,000 16.75 dresses, is that correct? A. 16.75 and up merchandise, whether they were costumes, suits or dresses.

Q. I show you Commission's Exhibit 942-F and ask you the figures reflected there does not intend to convey the information for Aarons, Bernstein & Aarons \$400,00 worth business in the 16.75 and up dress field?

Trial Examiner Diggs: The answer is yes or no.

A. Yes.

Mr. Albert: That is all on that.

12890

Q. I show you Commission's Exhibit 942-C and calling your attention to Sam Davidson, Inc., on which exhibit it said their volume of business was \$250,000, \$25,000 of which was in 16.75 and up, \$25,000 of which was 14.75 and up, and \$200,000 of which was below. Can you tell me now in what manner you determined that Sam Davidson, Inc., did \$25,000 worth of business in the 16.75 and up field? A. No, I cannot at this time.

Q. Did you obtain that approximate figure from the N.R.A. figures or was it predicated upon your personal estimate?

Mr. Martin: Objected to. He has already answered that.

Trial Examiner Diggs: Overruled. He said he does not know now. You may answer. 12891

A. It was predicated, as far as I recall, on my personal estimate as consulting the various factors I have already mentioned here.

Q. Did you discover or learn in consulting either the N.R.A. that Sam Davidson, Inc., listed under N.R.A. as a 10.75 house? A. No, I don't recall any such discovery.

12892

*Herbert O. Bergdahl—For Commission—Cross.*

Q. Do you not now know as a matter of fact that Sam Davidson, Inc., does not make 16.75 dresses?

Mr. Martin: Objected to as irrelevant whether he makes them or not.

Q. Or did make them in 1935?

Trial Examiner Diggs: I will overrule the objection to the amended question.

A. I don't recall now what he did in 1935.

Q. Do you know what he makes now? A. No, sir.

12893

Trial Examiner Diggs: Have you any information such as has been sought to be elicited by counsel for the respondent concerning any of these concerns who are mentioned in this Commission's Exhibits 941 and 942?

The Witness: We did have at the time.

Trial Examiner Diggs: I mean, have you now any recollection about any of these matters?

The Witness: No, sir.

Q. Have you now any records, written records, of the information which formed the foundation for Commission's Exhibits 941 and 942? A. I looked for it as you requested and I couldn't find any.

12894

Q. Did you request it of Harris & Serwer? A. Yes, I requested it from Mr. Serwer.

Q. And what was his answer? A. He said that he had broken up—

Mr. Martin: Objected to.

Trial Examiner Diggs: The question is, did he have the information?

The Witness: No.

Q. So that there are no records at the present time which can be investigated to determine the accuracy

of Commission's Exhibits 941 and 942; is that correct? A. I wouldn't know. How could I answer that?

Q. Mr. Bergdahl, in preparing Exhibits 941 and 942, did you at that time compare and in any manner reconcile the N.R.A. figures and the Harris & Serwer figures? A. I believe there was some comparison there. I have already stated that the N.R.A. figures were used in compiling this report. I do not say they were used in toto, but they were used.

Q. Do you know upon what basis and what factors were taken into consideration in the preparation of the N.R.A. figures?

Mr. Martin: Objected to.

12896

Trial Examiner Diggs: I overrule it. The Commission relies upon those figures—whether the integrity of this exhibit—and I think he has a right to inquiry into it.

A. No, sir.

Q. Do you know what factors were taken into consideration in the preparation of the Harris & Serwer figures? A. Well, I may know some of them.

Q. What are some of them? A. The names of the manufacturers in the Guild are some of them as furnished to us by your letter heads.

Q. In taking the N.R.A. figures and the Harris & Serwer figures, did you discover that there was a difference in the figures of approximately \$25,000,000? A. No, sir, I didn't discover anything.

12897

Q. Are you by explaining the "I" inferring that perhaps someone else on your staff perhaps did discover it? A. I am making no inferences except to myself.

Q. Did any of your staff discover it and report that discovery to you? A. I don't know. None of my staff made any report to me about it.

12898

*Herbert O. Bergdahl—For Commission—Cross.*

Q. Now, how many manufacturers did you take into consideration in so far as the total number is concerned in making the estimates contained in the Commission's Exhibits 941 and 942?

Mr. Martin: Objected to. It has already been answered.

Trial Examiner Diggs: The objection is overruled. You may answer.

A. I couldn't name a number.

Q. Well, a rough approximation. Did you consider 3,000 manufacturers in the industry? A. No, I couldn't name a number. I don't know.

12899

Q. Can you give me the approximation—the approximate lowest number that you considered in arriving at the figure? A. No, sir, not at this moment I can't.

Q. Is there any record that you have, any memorandum or any person with whom you can check up to determine the number of manufacturers that were considered in arriving at the figures in Commission's Exhibits 941 and 942?

Mr. Martin: Objected to. It has already been testified that he has no record.

Trial Examiner Diggs: I think we have already gone far enough with this line and I will sustain the objection.

12900

Mr. Albert: Exception.

(At this point the Trial Examiner directed the physical deletion of certain remarks of the Examiner and of counsel for the respondent and the witness.)

Q. Now, Mr. Bergdahl, you have just asked the Examiner to query me as to whether or not—as to what period I was referring to when I asked you whether or

*Herbert O. Bergdahl—For Commission—Cross.*

12901.

not you knew there was a difference between N.R.A. figures and the Harris & Serwer figure of \$25,000,000. When you answered the question what period were you referring to? A. My figures have reference to 1935, the year 1935.

Q. And is that answer correct as to that year?

Mr. Martin: Let him finish. Have you finished, Mr. Bergdahl?

The Witness: That is right.

Q. And is your answer correct as to that year? A. The N.R.A. didn't hand out any figures after June, 1935, as I recall it, and therefore your question isn't to the point.

(Further deletion of remarks by counsel for the respondent was directed by the Trial Examiner.)

12902

Q. What N.R.A. figures did you use in reaching your estimate of volume for 1935? A. I told you I used N.R.A. figures. Up to the time—I didn't say—but I used N.R.A. figures as long as they were available and then I got other figures after that.

Q. When was the last N.R.A. figures that you used? A. The last one that was issued.

Q. When was that? A. I don't recall; I think it was June, 1935 or May, 1935.

Q. So there were figures issued by the N.R.A. in 1935? A. Yes.

Mr. Martin: Objected to.

12903

Trial Examiner Diggs: I sustain the objection of the repetition of that.

Q. Now, was there any period of time in your investigation of the figures in which you discovered that there was a discrepancy between the N.R.A. figure and the Harris & Serwer figures of \$25,000,000? A. No sir.

12904

*Herbert O. Bergdahl—For Commission—Cross.*

(At this point another physical deletion was directed to be stricken from the record by the Trial Examiner.)

Q. Now, Mr. Bergdahl, will you be good enough to tell us—

Trial Examiner Diggs: There you go again with "be good enough." Strike the "good enough," let that appear in the record.

12905

Q. Mr. Bergdahl, tell us in brief the mechanics by which you obtained these figures from your buyers and if you know how your buyers obtained the figures which they gave you? A. I didn't say I got figures from my buyers, as I recall it.

Q. What did you get from your buyers, 'Mr. Bergdahl'?

Trial Examiner Diggs: The witness has already in response to his cross-examination of Thursday gone into this matter. We are not going into it any further now.

Q. Did you get any estimates of volumes from your buyers? A. No, sir.

12906

Q. Mr. Bergdahl, do you recall saying yesterday that you obtained the figures reflected in Commission's Exhibits 941 and 942 from your buyers, from Harris & Serwer and from the N.R.A.?

Trial Examiner Diggs: That is not a proper form of question to ask the witness, whether or not he recalled something. The witness will not answer that.

Q. I read to you from page 8161 of the record and ask you if you—

Trial Examiner Diggs: You are not going to read to the witness from anything.

(Further deletion of remarks by counsel for the respondents at direction of Trial Examiner.)

Trial Examiner Diggs: You are not going to read to the witness from any page of the record, to which ruling counsel may have an exception.

Q. Now, did you ever—do you know anything about Jane Junior, Mr. Bergdahl—

Mr. Martin: Objected to, your Honor.

(Further deletion by direction of the Trial Examiner.)

12908

Trial Examiner Diggs: In response to a suggestion by counsel for the respondents I now state that this witness, as I understand it, has already testified that at the present time he has no recollection whatever concerning the dollar volume of business done by any of the persons whose names appear upon Commission's Exhibits 941 and 942. Is that correct, Mr. Witness?

The Witness: I think that is substantially correct, yes, sir.

Trial Examiner Diggs: Then I understand that counsel for respondents states that in view of that statement that he does not desire to follow up this line of examination. Is that correct?

12909

Mr. Albert: That is correct. No further questions.

Mr. Martin: I have no further questions.

Trial Examiner Diggs: You may be excused, Mr. Witness.

(Discussion off the record.)

Trial Examiner Diggs: This hearing is adjourned and will be resumed at 10 o'clock A. M. November 15.

12910

*Herbert O. Bergdahl—For Commission—Cross.  
Proceedings Before Examiner.*

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(Thereupon, at 11.45 o'clock A. M. November 12, 1937, the hearing in the above-entitled matter was adjourned to Monday, November 15, 1937, at 10 o'clock A. M.)

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Room 901, 45 Broadway,  
New York, N. Y.,  
January 5, 1938.

12911

Met, pursuant to adjournment, 11 A. M.

Before: CHARLES F. DIGGS, *Trial Examiner.*

(Same Appearances.)

PROCEEDINGS.

Examiner Diggs: Are you all ready?

Mr. Martin: Yes.

Examiner Diggs: You may proceed, then.

Mr. Martin: If your Honor please, counsel for the Commission and counsel for the respondents have entered into a stipulation as to the volume—as to the sales volume of the members of the Guild for the year 1935.

12912

That has been made up into the form of an exhibit, showing a breakdown by dress business and other than dress business, and breakdown according to price lines. There are two columns. Column A represents the figures for these members of the Guild for the entire year 1935, regardless of whether or not they were in the Guild for the full year. Column B represents the figures for the same members, but takes into consideration only the actual period of 1935 during which the various members were in the Guild.

I would like to have this marked as Commission's Exhibit No. 1050 and offer this in evidence.

Examiner Diggs: All right.

Mr. Albert: No objection.

Examiner Diggs: I understand that counsel for the respondents agrees that this exhibit truly sets forth the facts which it purports to set forth—

Mr. Albert: That is correct.

Examiner Diggs (continuing): And is received in lieu of testimony, and it should have the same force and effect as if the witnesses testified to the facts contained in this exhibit. Is that correct?

Mr. Albert: That is correct.

Examiner Diggs: The exhibit may be admitted in evidence.

(The paper referred to was thereupon received in evidence and marked Commission's Exhibit 1050.)

Mr. Martin: If your Honor please, the same sort of exhibit is being prepared for the years 1934 and 1933. Unfortunately, we did not have time to get that made up in time for the hearing this morning, but it has been agreed between counsel that as soon as that is completed, it may be offered into evidence on exactly the same basis as the figures for 1935 without objection.

We hope that that will be done Monday. If not, it will be prepared—it will be offered as soon as it is completed.

Examiner Diggs: That is the agreement, I understand, by counsel for the respondents?

Mr. Martin: That is correct.

Examiner Diggs: All right.

Mr. Martin: Now, if your Honor please, subject to the admission of those other two exhibits when they are completed, the Commission at this time rests its case in chief.

Examiner Diggs: Now, then, by an agreement between the Trial Examiner and counsel on both sides, the respond-

12916

*Proceedings Before Examiner.*

ents will begin the taking of their testimony at 10 o'clock A. M. January 10, 1938, in Room 901, 45 Broadway, New York.

Mr. Albert: On behalf of the respondents, Fashion Originators Guild and other respondents, I respectfully move that the proceedings instituted by the Federal Trade Commission be dismissed for failure of proof and for legal insufficiency of the allegations of the complaint.

Does your Honor care to hear argument?

12917 Examiner Diggs: No. The Trial Examiner has no authority to pass upon that motion, and the same will be considered by the Commission either at the final argument or before, in the event the Commission should grant the respondents a hearing before the final argument.

This hearing is adjourned, to be resumed at 10 o'clock A. M. on January 10, in Room 901, 45 Broadway, New York.

(Whereupon, at 11.30 o'clock A. M., January 5, 1938, the hearing in the above-entitled matter was adjourned to January 10, 1938, at 10 o'clock A. M., same place.)

Room 901, 45 Broadway,  
New York, N. Y.,  
January 10, 1938.

12918

Met pursuant to adjournment at 10 o'clock A. M.

Before: CHARLES F. DIGGS, *Trial Examiner.*

(Same Appearances.)

PROCEEDINGS.

Examiner Diggs: Are you gentlemen ready?

Mr. Albert: Yes.

Mr. Post will take the stand.

ALBERT M. POST, heretofore produced, sworn and examined as a witness on behalf of the respondents, being recalled, testified further as follows:

*Direct examination (resumed) by Mr. Albert.*

Q. Mr. Post, are you connected with the Fashion Originators Guild of America? A. I am.

Q. In what capacity? A. I am executive director.

Q. And when did you become such? A. I became executive director in October, 1934.

Q. Now, will you please recount briefly for us the positions which you have held in the ready-to-wear and dress industry since your connection with that industry? A. Well, I entered the business officially in March, 1914, going with William Filene & Company, of Boston; I served my apprenticeship in the retail business there, starting as a stock boy. I became—or entered the first executive position within a year or two, becoming the assistant buyer in the basement.

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Examiner Diggs: Just off the record a minute.

(Discussion off the record.)

Examiner Diggs: Counsel for the respondent has just stated that the reason for this apparent extensive qualification of this witness as an expert is intended for the purpose of laying the proper foundation to show this witness' familiarity with all the matters connected with this industry, in order that he may testify as to the chaotic condition of the industry before the putting in of facts about the practices complained of in the complaint, and that it is the purpose of the respondent to show that it was necessary to adopt this method which has been complained about, in order to prevent an evil which otherwise would

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*Albert M. Post—For Respondents—Direct.*

have wrecked the industry, and that, in addition, that the motive in doing this was not for the purpose of violating the law, but was for the purpose of preserving the industry.

Am I right in that, Mr.——

Mr. Albert: Substantially correct, your Honor—sufficient for our purposes so far as this question is concerned.

Examiner Diggs: All right. Then my ruling is that that line of testimony is not admissible, because it is not an issue in this case. My view is that it makes no difference what the motives may have been or what the necessity for the action may have been.

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The simple question in this case is whether, conceding that the respondents have done the things charged in the complaint, those things constitute a violation of law. And that is the only issue in this case, and, therefore, I am going to refuse to permit the respondents to introduce any testimony along the lines indicated; that is to say, testimony showing the necessity for this action or the chaotic condition of the industry prior to its adoption. If you want to make a tender in the record now as to what you would prove——

Mr. Albert: May I be heard briefly, your Honor?

Examiner Diggs: Off the record.

(Discussion off the record.)

12924

Mr. Albert: In the light of your Honor's ruling upon the issues which present themselves in this case, I respectfully move that your Honor strike from the record the entire testimony presented by the Federal Trade Commission in New York, in Boston, in Philadelphia, in Cleveland——

Examiner Diggs: You do not need to enumerate.

Mr. Albert: I want to make sure I am not leaving anything out, your Honor.

Examiner Diggs: I am going to stop this by stating, "and in all the places where the testimony was taken."

Mr. Albert: Except the bare proof that the department stores and retail shops who testified on behalf of the Commission were, at the times testified to, red carded by the Fashion Originators Guild of America.

Examiner Diggs: Motion is overruled.

You may have an exception.

Mr. Albert: Now, if your Honor pleases, in so far as particulars—

Examiner Diggs: Off the record.

(Discussion off the record.)

Examiner Diggs: For the purpose of permitting counsel for the respondents to consult with his clients and with his associates because of my ruling, this hearing is adjourned until 1 o'clock to-day.

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(Thereupon, at 11 o'clock A. M., a recess was taken until 1 o'clock P. M. of the same day.)

#### AFTERNOON SESSION.

(The recess having expired, the hearing in the above-entitled matter was reconvened at 1 o'clock P. M. of the same date, and further proceedings were had therein as follows:)

Mr. Weisman: I respectfully except to your Honor's ruling and except upon the ground that the purpose of this testimony is to show that the activities of the Guild tend merely to regulate competition and to thereby promote and not to suppress it. I do further object to this ruling and except to it on the ground that no Court can intelligently consider the activities of the Guild unless I am permitted to show the facts peculiar to the business to which the restraint is applied, the condition of the business before and after the restraint was imposed, the nature of the restraint and its effect, both actual and probable, by comparing what was the condition prior to the application of the restraint and subsequent to it.

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*Albert M. Post—For Respondents—Direct.*

I further say that that cannot be passed upon by any other Court correctly unless we have before your Honor the history of the restraint, and the history of the restraint cannot be considered unless the factual, industrial and economic background to which the restraint is applied is before you. I say further that no Court can say whether this is a proper—

Examiner Diggs: Just a moment now, Mr. Weisman, you are arguing this matter out. You have gone over the line. Off the record, please.

(Discussion off the record.)

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Mr. Weisman: There is one thing that I also want to make plain to your Honor and that is that we are not offering this testimony for the sole purpose or for the purpose of showing motive, because I do agree with the Court that good intention will not save an otherwise objectionable regulation or the reverse, but I say that it is necessary to have this before the Court because knowledge of intent will help the Court to interpret the facts and predict the consequences.

I further object to your Honor's—except to your Honor's ruling upon the ground that this is a proceeding under Section 5 of the Federal Trade Commission Act.

Examiner Diggs: Off the record.

(Discussion off the record.)

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Mr. Weisman: The Courts have repeatedly held that the test to be applied in these proceedings is the test that is to be applied—my opinion is that the Commission cannot find whether or not this restraint is an unfair method of competition—that such fairness or unfairness cannot be decided without having before the Commission the evil sought to be cured thereby.

Examiner Diggs: Off the record.

(Discussion off the record.)

Examiner Diggs: Counsel has already made that statement in the early part of your statement. You made that

same statement. You are simply going and rehashing the same grounds over again.

Mr. Weisman: That under the pleadings in this case which had been accepted by the Federal Trade Commission, the matter of the justification for the imposition of the restraint was duly pleaded and no objection or motion made with regard thereto by the Commission.

Examiner Diggs: The objection is overruled. The ruling stands. You may have an exception.

Mr. Weisman: Yes. If the respondent were permitted to go on with the testimony, he would have by such testimony proved the following: 1—that prior to 1917, the ladies' ready-to-wear industry was of no large moment in the United States of America. That the individual dress-maker then held sway.

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Secondly, that shortly after the war, the manufacture and sale of ladies' ready-to-wear dresses became really an industry.

I would offer to prove that some manufacturers—no—I would also show that the dollar volume of sales by manufacturers of ladies' ready-to-wear dresses prior to the advent of the Guild was generally in excess of \$600,000,000.

Next, that prior to the advent of the Guild, the manufacturers of ladies' ready-to-wear dresses originated designs for the dresses they made. Those are known as style creators.

I would also offer to prove that prior to the advent of the Guild, there were a number of manufacturers who did not own—did not make their own designs—did not make their own designs but copied the designs of other manufacturers.

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I would prove prior to the advent of the Guild, there was a well-defined line of demarkation between the two types of manufacturers. That those who designed and produced their own styles were accepted as and known in the industry as houses of original creations and that manu-

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*Albert M. Post—For Respondents—Direct.*

facturers who copied the designs of other manufacturers who originated them were known as copyists or style pirates.

I would also prove that prior to the advent of the Guild, the copying by one manufacturer of the designs of another was commonly called "Style Piracy" and "Design Piracy."

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I would offer to prove and prove the difference between the term "style" and the term "design." That while they are frequently loosely used as the same thing, that in this industry they are not the same thing; that style as applied to a dress refers to its general characteristics such as the length of the skirt, the size of the sleeves, the height of the waist, etc., while design as applied to the dress includes all of the details involved in its make-up. That a style is a type while a design is an interpretation or an adaptation of the style.

I would also prove that a single style may be followed by any number of designs; that are—that of one style you can have an innumerable number of designs.

I would also offer to prove that a "fashion" is a style which has been popularly accepted and has a place in consumer acceptance. In other words, people want to buy.

I would offer to—I would prove that styles in ladies' dresses are usually set or fixed in the so-called style centers of the world other than New York.

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I would prove that Paris is the principal style center for ladies' dresses.

I would prove that the original designer for the purpose of obtaining style information—that is, information as to trends of the style generally as differentiated from the design which must be adapted to the New York or American woman, sends his designer or stylist to Paris where they receive knowledge of the style or what is known in the industry as "style inspiration." That from such observation, they observe the prevailing Parisian styles and fashions and determine their probable trends and avail-

ability for adaptation in the United States of America. That after making such observations and determinations, the stylist or designer for the creator prepares their own designs, creations, using merely the style for trend or inspiration.

That in doing this, they use the information they have obtained in Paris also their own knowledge of the probable requirements of their own customers, their own genius, their own experience and their own ideas as to what will meet the requirements and the demands of the buying public in America with—which they serve.

I would also prove that always since the commencement of this industry, such designs prepared in such fashion have been considered in the industry to be original creations of the designer even though they may not be novel in the sense that nothing like them has ever existed before. I would then prove the cost and method and practice in making up such original designs to the original creator. I would show that the designs which appeared to have a market-wide value are made up into samples; that when a collection of samples has been assembled, that many of them for one reason or another which could not be determined in advance, of their assembly and in advance of going to the expense of making them up have to be discarded as unsalable or otherwise unsuitable.

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I would then prove that the samples which are left after these eliminations have been made constitute the manufacturer's line which he shows to his customers.

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I would also prove that in this industry there are five seasons to the year—the spring season, the summer season, the fall season, the winter season and the winter resort season.

I would prove that a manufacturer or creator—that is, a creating manufacturing—a creator manufacturer who produces original styles makes up his line of samples for

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*Albert M. Post—For Respondents—Direct.*

each season. I would prove that the cost of making up this line of samples for each manufacturer is between \$25,000 and \$50,000 per season, depending upon the diversity, scope and price range of his line.

I would prove that after this expenditure arrived at in this fashion, a manufacturer having prepared his line, it is now put on display in the manufacturer's showrooms, and it is there exhibited and shown to prospective retailers.

I would prove that prior to the creation of the Guild and because of style piracy among other things, the retail buyer purchased only at first a small number of dresses of any one design. I would then prove that if the particular dress that he purchased turns out to be a good seller, the retailer usually purchases more dresses of the same design; that these additional purchases are called re-orders and that the success or failure of the manufacturer's business is dependent upon his re-orders; that in the operation of the business of manufacturing and selling original dresses, no manufacturer can successfully or profitably continue in business upon the basis of his original orders.

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I would also prove that the period between the first order of a dress—of a particular design and a last substantial re-order is called the style life of the dress. I would prove that the style life of a dress prior to the advent of the Guild was not more than three weeks.

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May I have a moment's rest from this, your Honor?

Examiner Diggs: Yes, I am perfectly willing you do. (Thereupon a brief recess was taken.)

Mr. Weisman: I would prove that the manufacturer who is a copyist, or style pirate, does not send stylists, or designers, to Paris for inspiration; that instead, he copies the original designs of other manufacturers; that the copying of original designs is accomplished in different ways—sometimes it is done by bribing, and has been done

by bribing the employees of the creating manufacturer to disclose the confidential information and knowledge of the line.

I would prove that in the past it has been done by outright stealing—by breaking into the premises and burglarizing the premises of the original designs.

I would further prove that it has frequently been done through the fraud of persons coming into a showroom and purporting to be interested in purchasing garments, when in truth and in fact they appear only for the purpose of fraudulently obtaining knowledge, which they sketch down and then surreptitiously sell to these style pirates, or copyists.

I would prove that another means of doing this is through the fraudulent connivance of so-called resident buying offices and copyists; the resident buying offices calling for numbers on the original line for the avowed, though—for the avowed purpose of purchasing the goods of the manufacturer, but, in truth, for the purpose of turning these samples over for copying by the style pirates.

I would also prove that this style piracy had been accomplished, to a large degree, by the copyists or style pirates bribing the contractors of the dress creator to deliver to them in advance even of delivery to the one whom he is working for, of the samples which the contractor was ostensibly making up and being paid for by the creator.

I would prove that prior to the advent of the Guild, this style piracy was responsible for the chaotic condition of the dress industry, for the inability of those creating styles to continue to stay in business profitably, for the large number of bankruptcies which attended the industry, and that as a result of style piracy, the mortality of those who attempted to create—the business mortality of those who attempted to engage in the creation of styles was 25 per cent. per year.

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*Albert M. Post—For Respondents—Direct.*

I would prove that this style piracy, prior to the advent of the Guild, was the chief cause of cancellations and returns. In other words, a manufacturer would sell a dress as an original. It would have been surreptitiously, without his knowledge, copied down. It would thereupon compete with the original when attempted to be sold. As a result thereof, the dress would either be returned to the manufacturer—to the style creator, or the order, if not yet shipped, would have been—was cancelled.

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I would prove that a further injury to the manufacturer was that this style piracy ruined and destroyed the reputation and good will of the style creators; that their reputation was built upon their claimed originality of design; that the style piracy, fraudulently and wrongly deprived them of the benefit of this good will.

I would also prove that it was injurious to the manufacturer of the original, in that by means of this piracy, the copyist manufacturer took what might be called a "free ride" upon the—at the expense of the creator; that he took the benefit of the large expenditure, of the use of the ingenuity, brain and genius, and appropriated them, through any one of the means I have before set forth.

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I would also prove that it was injurious to the higher class creator, in that it resulted in the palming off of cheaper merchandise which looked the same as the original creation, but in truth and in fact, wasn't made in the same way, with the same care, with the same fine goods—and through its simulation destroyed the worth of the original.

I would also prove that the grave injury that this style piracy did to the manufacturer was that it resulted in hand-to-mouth buying by the retailer, in that the retailer never knew when a dress was going to be copied and appear in a cheaper fashion but sufficiently cleverly copied to fool or deceive a casual observer—so that the retailer was unwilling to place an order for a large number.

This, in turn, resulted in the inability of the manufacturer of the original creation to purchase goods in large bulk, to make up a large number of dresses, to regularly and steadily employ his help, to take advantage of large-group or large-volume purchases. But he, in turn, had to purchase from hand to mouth, thus paying larger sums for his merchandise.

I would also prove that this was injurious to the manufacturer in that it shortened the style life of a dress; that while a line took a number of months to design and to create, yet the minute it was copied down, it was then copied down further and further.

I would prove that it was no uncommon thing for a dress, originally produced fairly and honorably at, say, \$79.50 retail, to be copied down by simulation to \$16, thus completely destroying the worth, the investment of the creator of the original.

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I would prove that style piracy was unfair to the creator in that it enabled copyists to avoid the heavy expense involved in the preparation of original designs. I would prove that style pirates, or copyists, manufacture their dresses in cheaper material and by cheaper labor than do creators of originals.

I would prove that such style piracy destroyed the style or design value of dresses which were copied. I would also prove that women will not buy dresses at good prices in one store, if dresses which look about the same, but in truth and in fact, are not the same, are offered for sale at another store at substantially a lesser price.

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I would show that through this cause, copying substantially reduced the number and amount of reorders of the original creators. I would prove that the uncertainty with respect to reorders, arising from this style piracy, made it difficult, if not impossible, for original creators to so regulate their production as to enable them to employ labor continuously.

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*Albert M. Post—For Respondents—Direct*

I would show that this style piracy was a progressive evil—that copying was done progressively; that the first copy of an original design would sometimes sell at 65 per cent. of the original, that then there would be a copy of the copy, which would sell down from that, and that there would then be a copy of the copy of the copy, and so on down the line. I would also prove that this copying of a copy affects the business of the first copyist adversely, and so on down the line—that the second copyist affects and injures the business of the first copyist, as the first copyist injures the business of the original creator.

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I would also prove that prior to the advent of the Guild, this copying was of severe danger and injury to the retailer—that such design piracy injured and, in many cases, destroyed the reputation of the retailer for honesty, style-ability, and service; that these are important assets of the retailer.

Then I would prove that in numerous or innumerable cases, customers have bought a dress at one ethical store, which sold it as an original; that later, the dress was returned on the ground that she had seen the same dress at another store at a lower price; that this injured the reputation of the retailer, as it caused her to think that she was being improperly over-charged at the first store. Secondly, it destroyed the reputation of the first store with regard to its distinctive style-ascertainment abilities. Furthermore, the dress was never the same dress, but these dresses merely simulated the original.

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I would also prove that these customers always—even when the matter was explained to them—held a resentment against the store that sold them the original. I would prove that the business was injurious to the retailer in that through style piracy, a large number of dresses which were sold didn't stay sold, but were returned; that this made it unable for the store to properly budget itself; that the style piracy was the greatest single factor in causing

the retail establishments handling style merchandise to take large, excessive mark-downs; that as a result of this, prior to the advent of the Guild, and almost without exception, every mercantile establishment handling high class, or high styled dress creations, ran those departments at a distinct loss to itself, but it couldn't control it. And this loss was only attributable to the style piracy.

I would also prove that prior to the advent of the Guild, unethical or dishonest retailers, attempting to unfairly compete with ethical retailers who were handling style originations, would observe the advertisements of the ethical retailer, or the retailer handling style originals or style creations, and thereupon, by use of inferior copies priced at lower prices, would destroy the goodwill of the original—the retailer handling the original, destroy the value of the advertising and trade upon the original—the retailer who handled the original—upon his style-ability.

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I would show that the retailers, prior to the advent of the Guild, maintained large and expensive stylist experts in selecting styles; that the unethical retailer had no such force or the expense incident to it, and would merely resort to the practice of copying that which the other retailer—the first retailer was doing, but would do it by and with the use of copies, and thus seem in fact to undersell the ethical retailer, when in truth and in fact, he was offering or palming off an inferior garment.

I would prove that this great injury to the retailer was of great injury to the manufacturer; that the retailer was the outlet for the manufacturer; that the manufacturer, in the operation of his business, could be no more successful therein than were the people who handled his merchandise, and that by this destruction of the retailer, in turn, the manufacturer was gravely injured.

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I would also prove that before the advent of the Guild, this style piracy was injurious and harmful to the consumer. I would prove that in the first place, through testi-

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*Albert M. Post—For Respondents—Direct.*

mony—that this practice of copying of styles and style piracy left the consumer in a hopelessly impossible state of mind with regard to style. A person purchasing an original never knew that she was getting an original and that it might not be copied down to almost nothing.

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I would also prove that frequently and in innumerable cases, the consumer would be imposed upon; that the various manufacturers in this industry have maintained and established, through advertisements, throughout the country, through many years of high styling, a standing, so that their particular dresses had a ready consumer acceptance; just as a French dress would be accepted by reason of it being designed and made by a couturier, so the designs of our American manufacturers were readily accepted; that these unethical retailers, taking advantage of the lack of knowledge of the consumer with regard to the mechanical operations in a dress, the merchandise that goes into it, directly palmed off a cheap and inferior copy as an original. They would copy a creator's dress, and sell the copy as the dress of the creator.

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I would also prove that this unfair competition which arose by reason of style piracy, was unfair to the consumer in that, in the long run, the purchaser of the original creation had to pay a much higher price for the dress than if there were not such unfair competition, in that the cost and losses incident and which arose from this unfair and pernicious practice, had to be absorbed somewhere, and they were absorbed by those few who purchased these dresses.

We would also prove that the consuming public generally and completely was resentful against this copying; that in all price ranges, the consuming public desired to know that it had an original or that, if it were represented as an original, it was original.

I would also prove that the effect of this style piracy was tremendously injurious and detrimental to labor; that

style piracy was the greatest of all contributing factors to the sweat shop conditions which were so long incident to the dress business; that this arose as follows: that when a manufacturer copied down a dress, the only possible place where he could make a large saving in the cost of that dress was through the sweating of it—of the labor that went into the dress.

We would prove that in almost every case, these copyists were in the habit, in order to compete solely on price, one with the other and all with us, of taking the dress and auctioning the labor off, and he who offered less, to do the work for less, got the order. This was so because the copyist, having no origination in style, nothing of value to offer other than the ability to copy cheaply, and since he couldn't buy his merchandise any cheaper, could only resort to one of two practices, in addition to wiping out the cost of designed dresses—of designing: a, substituting shoddy or inferior merchandise; b, sweating his labor and obtaining the labor at prices which did not give rise to an ability of the worker to support himself.

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We would also show that it was injurious to labor, in that this style piracy, more than any other factor, by shortening the style life of a dress, contributed and brought about the seasonal employment of labor, with a seasonal slack. A dress was brought out; it would be accepted. Whereupon, a great many people would be put to work at the sweat-shop prices to copy it. They would immediately destroy the value of the dress. They would immediately be laid off and have nothing to do until another good dress could be copied to advantage.

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I would prove that prior to the formation of the Guild, the dress industry was in the chaotic condition that I have described and that this chaotic condition was due to the prevalence of style piracy.

I would prove that the purposes for which the Guild was formed were only those as set forth in its certificate of incorporation, to wit—

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*Albert M. Post—For Respondents—Direct.*

Examiner Diggs: Wait a minute. Do not read that. That is in evidence.

Mr. Weisman: Then I would— Off the record.

Examiner Diggs: Off the record.

(Discussion off the record.)

Mr. Weisman: I would call each member of the Guild to prove that the sole and only reason that he joined the Guild and took part in its purposes and deliberations, were that in his opinion the elimination of style piracy was absolutely necessary and essential if such persons were to be able to continue in business.

Examiner Diggs: You are talking about the manufacturer now, are you?

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Mr. Weisman: Yes.

Examiner Diggs: All right. Go ahead. You may proceed.

Mr. Weisman: That in no event do any of them join the Guild, nor does the Guild red card anybody except in its efforts to curb style piracy.

Examiner Diggs: We will take a recess for a couple of minutes.

(Thereupon, a brief recess was taken.)

Examiner Diggs: The offer of proof is denied, and counsel for the respondents may have an exception.

We will adjourn now at 3:15 to meet at 11 A. M. on January 13, 1938.

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(Whereupon at 3:15 o'clock P. M., January 10, 1938, the hearing in the above-entitled matter was adjourned to January 13, 1938, at 11 o'clock A. M., same place.)

Room 500, 45 Broadway,  
New York, N. Y.

January 13, 1938.

Met pursuant to adjournment at 11 o'clock A. M.

Before: CHARLES F. DIGGS, *Trial Examiner.*

(Same Appearances.)

PROCEEDINGS.

Examiner Diggs: You may proceed, gentlemen.

Mr. Albert: If your Honor pleases, at this time, I wish to state had the respondent been permitted to do so it would have proved by competent evidence—and I now offer to prove, in addition to the previous proffer of proof, the following:

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There is a distinction between the use of Paris importations as a basis for the theme of a design and the copying of a design of a dress as created by members of the Guild. Paris couturiers make it a business to create dresses in anticipation of the prevailing fashions for the express and specific purpose of showing their ideas to manufacturers from all over the world, who pay a fee for the privilege of viewing the dresses, and for the right thereafter to adapt the style theme as set by the Paris creators pursuant to their own conceptions of proper designs.

Manufacturers may also, and do, copy a Paris creation in the detail of its design, which copying is recognized as equitable and honorable in the industry and is encouraged by the Paris couturiers when paid their fee for the privilege. Style pirates, without authorization or consent or the payment of any fee, copy in detail the original designs of members of the Guild.

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Original creators use an insignificant number of many details in the designs of Paris creations, the overwhelming

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*Albert M. Post—For Respondents—Direct.*

number of details in their own dresses being almost wholly of their own inspiration.

Members may not register as originals and receive protection on designs which might be considered as copies of imports. Unless a dress registered by a member is substantially different from a Parisian import of which it may be charged to be a copy, it is not protected by the Guild program. Members of the Guild, to a great extent, do create their own original designs, without any dependence on Paris inspiration of any nature. Although many manufacturers of original creations spend from \$25,000 to \$50,000 in the development of a line, a successful line may be produced at a designing cost not in excess of \$2,500 for the line.

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There is an ample supply of good designers ready, able and willing to work who may be availed of and employed by copyist manufacturers fully capable of designing a line that will be successful and profitable.

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The most important element in a dress to a woman is its ability to distinctly reflect the style trend in its design and to be fashionable. Dress to a woman is not a mere covering or article of clothing, but is a source of great pleasure and a means of expressing her individual personality through adornment, particularly with the end in view that at all times creating not only a distinctive but a youthful appearance by reason of which American women abhor the thought of being regimented and required to in effect wear a uniform through the duplication of the designs of the dresses, brought about by the evils of style piracy. Each woman believes herself to be a stylist and demands, in so far as possible, different and individual clothes and insists that her clothes follow the fashion trend. Workmanship, tailoring, material, needlework and other elements of the dress are secondary, and as a matter of course, are presumed to be of the character and quality indicated by the price of the dress.

The property right of a manufacturer in his original creation has been recognized by the United States Government in its establishment of a Design Patent Bureau which provides for the patenting of original designs in an attempt to give manufacturers an exclusive right to such designs. This attempt at protection, however, is impractical and fails of its purpose since the actual cost of patenting is prohibitive. To enforce the patent, it is necessary for the holder thereof to sue infringers throughout the country. The delay incident to obtaining a temporary injunction and a trial makes any attempted judicial action useless and unenforceable. Attorneys' fees are too costly and there is no protection during the period of attempted registration.

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The members of the Guild realize that style piracy was destroying their business and industry and that co-operative effort was necessary in order to protect themselves and by reason thereof voluntarily and willingly instituted the Guild program as protection against the thieving practices of unscrupulous competitors who were perpetuating a method of doing business which was slowly destroying the entire industry.

In recognition of the existence of the evil and because they believed the elimination of the evil of style piracy absolutely necessary to their continuance in business, the co-operating retailers located throughout the United States willingly and voluntarily subscribed to the Guild policy of elimination of style piracy.

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The Guild program has lately ameliorated the evil conditions which existed due to the evil of style piracy and has been the greatest single factor in stabilizing the industry to the benefit of manufacturer, retailer, consumer and laborer. The Guild program has resulted in increased competition on an ethical, fair, competitive basis and has resulted in a decrease of failures and of losses in the industry.

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*Albert M. Post—For Respondents—Direct.*

As a result of the Guild program, the necessity for and the practice of sweating labor has been considerably reduced, wages have been increased, slack seasons have been reduced and more continued and continuous employment of labor has resulted.

As a result of the program of the Guild, the public at large has been benefited in that women rely with greater confidence upon the integrity and the quality of the dresses which they purchase, and have been provided with a market for what they wish to purchase and which will satisfy them rather than being forced to purchase what they do not want because they have no other alternative.

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The Federal Trade Commission in other industries in which fashion is an important element has dominated style piracy therein as an unfair trade practice and violative of the property right of the creator of the fashions, predicated upon the advice and expressed wishes of a majority of the members of the industry affected. The style piracy thus characterized by the Federal Trade Commission is no different in substance or in effect than the style piracy condemned as an evil in the dress industry.

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Examiner Diggs: Now you are making an argument. I have sought not to interrupt you; although a great deal of your so-called proffer of proof is argument; but now clearly you are going into an argument and I am not going to permit that. What I am going to do is to allow you to make your proffer of proof, which I think you have a right to make. I think you have a right to make any statement. Just state the facts that you propose to prove, that is all—not any comments or arguments about it.

Mr. Albert: In addition, by the voluntary co-operative action of the majority of the members of over 80 industries in which fashion was an important element; codes of fair trade practice formulated by members of such industries under the National Industrial Recovery Act recognized style piracy as an evil, condemned the same and provided

methods for the eradication thereof. The style piracy thus characterized in such industries is identical with that in the dress industry.

Mr. Martin: I move that that be stricken as argumentative.

Examiner Diggs: Let it stand; and I just say to counsel again, confine yourself to strict and legal proffer of proof.

Mr. Albert: This offer of proof is made without prejudice to such further offers of proof as may become necessary or be deemed necessary in the further trial of the instant proceedings, by reason of the rulings of the Examiner, and elements have been present at this time due to the difficulty of determining and anticipating what presentation of proof has been forbidden by the previous general and blanket ruling of the Examiner.

12980

Examiner Diggs: The proffer of proof is denied and counsel for the respondent may have an exception.

Mr. Albert: Mr. Post.

ALBERT M. POST, heretofore sworn and examined on behalf of the respondents, being recalled, testified as follows:

*Direct examination (resumed) by Mr. Albert.*

Q. Mr. Post, will you explain the mechanics of the registration of a style with the Fashion Originators Guild?

12981

A. The registration with the Fashion Originators Guild is accomplished by the use of a two part form upon which has been transmitted a general description on one side which is accompanied by an affidavit establishing claim of origination and on the second side by a sketch of the style to be registered with complete detail, sometimes accompanied by a swatch of the materials to be used. That form is in two part arrangement perforated down the center and

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*Albert M. Post—For Respondents—Direct.*

as the offering manufacturer brings it to the Guild office, where it is registered by a means of perforation machine that runs in a serial number, dated with a stamp, torn in half, and the part that contains the sketch is returned immediately to the offending member while the part that has the general description and the affidavit is retained in our file. I believe that summarizes the mechanics of registration.

Q. Does the part that is returned to the offering manufacturer contain the stamp of the Guild? A. Yes, both of them do. It is perforated through the double sheaf of the form before they are delivered to the offering manufacturer.

12983

Q. Is any investigation or inquiry made by the Guild of the manufacturer at the time that that proffer is made by the manufacturer of this sketch which he is attempting to register? A. No.

Q. The sketch is automatically given a number and registered with the Guild, is that it? A. That is right. The numbers—I might clear that, Mr. Albert—the numbers are rather in sequence but not in sequence as to the particular manufacturer. In other words, the point is, that on any given day the registrations run from the first number succeeding the last number of the previous day. That, among other things, disposes of any claim of improper registration as to date.

12984

Q. To what does that registration entitle the manufacturer with respect to the sketch registered or the dress registered? A. Well, speaking broadly for a moment, first the Guild program of design protection is confined to those numbers registered by Guild members. Speaking more specifically, however, the registration of and by itself merely establishes the claim of origination and the date upon which it was offered. Have I answered the point you were asking?

Q. In other words, you mean that any dispute or any claim that the dress registered is not entitled to protection or is not an original, is something put aside in the future, or the purpose of registering is merely to fix the date of the claim?

Mr. Martin: If your Honor please, let the witness testify.

Mr. Albert: Off the record. May I say this?

(Discussion off the record.)

Examiner Diggs: Read the question.

(The reporter thereupon read the question.)

Examiner Diggs: I think the witness should be asked to state just exactly what force and effect this registration has with respect to securing for the registrant the rights to the exclusive use of that design. I think that is the whole question. 12986

Mr. Albert: Will the witness answer the question as reframed by the Examiner?

The Witness: I am not sure that I understand "force and effect," but I would say the answer is practically none. It merely establishes the claim to be determined subsequently by a style piracy committee. Nevertheless it does establish the basis of that claim. I assume it has some force and effect, but it does not actually establish any rights of his whatsoever.

By Mr. Albert. 12987

Q. What may be registered under the rules of the Guild, Mr. Post? A. The affidavit to which I have referred, which is on one part of the form, is required to establish a claim of original design. Therefore nothing may be registered unless it is the original conception and design and creation of the registering member or his staff. Negatively no imports, reproductions of models or reproductions of anybody's goods may be registered.

12988

*Albert M. Post—For Respondents—Direct.*

Q. When did this form of registration commence, Mr. Post? A. Early in 1933. Whether that was January, February or March, I can't say specifically, but about that time.

Q. Was this the first form of procedure adopted for the fixing of a claim of originality by the manufacturer? A. I would say that was the first form of procedure adopted, yes.

Q. Was there any other particular method which had been in use prior to the adoption of this style registration program? A. Yes, there were other methods.

12989

Q. In what manner is the claim of originality on the part of a manufacturer as reflected in his registration challenged?

The Witness: Will you repeat that question?  
(The reporter thereupon read the question.)

Q. That is, if somebody claims that that dress is not an original how is a proceeding instituted to determine it? A. The claim that a garment is not an original comes up usually and so far as I know in all cases because of the claim that some other garment is a copy of it. Therefore the question of origination and the question of piracy are offered for hearing, consideration and adjudication before an impartial—I think we call that Impartial Retail Arbitration Committee on Style Piracy.

12990

Q. Mr. Post, will you relate for us the various means and methods since the inception of the Guild that have been used either by the Guild or by members for the determination of whether or not one dress is a copy of another, bringing us down to the present day and describing the methods that are presently in use by the Guild? A. All right. The first means by which garments were adjudged to be copies appears to be in the fall of 1932. We were incorporated in the spring of 1932. Under the original suggestion, the question of adjudication of copies was in

tended to be done in each city by retail guilds which were anticipated would be organized. From that it appears that the next general plan and suggestion that was offered by the Guild for adjudication of claims of piracy involved the question of getting an outstanding person to act as arbiter, general and national arbiter, and the Guild, among other people, consulted with Dr. Julius Klein, who was at the time Assistant Secretary of Commerce and sought to interest him in this question and asked him to accept that position which he declined.

Q. About what time was this? A. Well, that was, according to my recollection, in the fall of 1932 and it possibly might have been in the early spring of 1933 but I don't think so; I think it was in the fall; I think it ~~was~~ in the fall. It is not clear in my mind at the moment. I know the incident and the general period but not the particular date. Then in the fall of 1932 came as I think—maybe I am repeating—but these plans for the retail guilds and the establishment in this first draft of contracts that had been worked out, the establishment of the principle of piracy adjudications within the cities by committees of retailers. Obviously that didn't work because of two reasons: Evidently because the guilds were not organized, and secondly, giving opportunity for a hearing for either the claimed piracy or the claimed originator. I could not be in many hundreds of cities at the same time when the question was coming up. So, therefore, in the spring—well I should say that for most of 1933—the results, the adjudications were generally gotten by consultation with the interested manufacturer from which resulted arbitration committees of some kind, depending upon what the dependents to the particular claim were satisfied with, both the Guild and non-Guild. There might have been and there were in some cases committees of manufacturers. Some cases they were entirely non-Guild manufacturers; some cases they were entirely Guild manufacturrs; some cases

12992

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12994

*Albert M. Post—For Respondents—Direct.*

they were a combination of both. They were also committees passing final judgments and adjudications in those days that were solely retail committees; representatives of offices. In other words, the method—and I am trying to be careful about the word, I am not sure—the method was non-prescribed. It was generally the result of what appeared to be satisfactory to the interested people. That takes us through 1933, I believe, and part of 1934.

Q. How would the people get together at that period of time, Mr. Post? A. Well, when a claim would come up the Guild organization would get in touch with the interested manufacturers and ask them to take an arbitration of some form.

12995

Q. And then the arbitration took the form that you have already testified to? A. Well, it took one of the forms of which I have testified to, yes.

Q. Go ahead.

Trial Examiner Diggs: What was the next step?

A. Sometime in 1934, I think about half way through the year, there developed an urge from various sources to establish a routine, a procedure and method that would be followed in all cases; and when I came with the Guild, which was in the fall of 1934, that question of establishing a routine had not as yet been completely solved. They were still proceeding, attempting to evolve a system or a routine. I consulted with manufacturers, members, retailers, all the people who were interested, and as a result there developed a system of adjudication by committees composed of equal numbers of retailers and manufacturers.

12996

Trial Examiner Diggs: When was that?

The Witness: That was either the late fall of 1933 or the early spring of 1935. Then through the spring of 1935, and the summer of 1935, there were a continuation of these conferences. Someone, not

Mr. Bergdahl incidentally, although he testified as to that, made the suggestion that there be retail committees, solely retail committees, and that a clear routine be established by which these committees would be called, and so forth. The Guild gave consideration to that and started the first steps of their present system which was to establish retail panels.

Trial Examiner Diggs: And that was about the period you just last mentioned, was it?

The Witness: Now we are in the fall of 1935, I believe.

Trial Examiner Diggs: And that is the date that you first put into practice the method which is now being used? Is that right?

12998

The Witness: Not completely. During the fall of 1935 it was put in, yes. I had not as yet clarified a final step in formulating our present plans.

*By Mr. Albert.*

Q. Will you do that, Mr. Post? A. Well, after these retailer panels and panels of manufacturer—because I think I pointed out, perhaps I did not—at that time the plan was a combination of manufacturers and retailers; but in any event in the fall of 1935—October or November—I had a conference with Mr. Kerstein of William Filene & Sons Company, and Mr. Bergdahl, and Mr. Bergdahl raised the question as to whether part of the current—

12999

Trial Examiner Diggs: Suppose we get down to just exactly what was done without going into the detail as to who suggested it and who did not suggest it. Let us get down to the facts. What was ultimately done? I think that is all we are interested in. Off the record.

13000

*Albert M. Post—For Respondents—Direct.*

Mr. Albert: I desire to go on the record and request that I go on the record to note my objection to the constant interruptions of the witness which are interrupting his train of thought that do not permit him to tell the story in a coherent manner in chronological order in which the events occurred. Some of the testimony—

Trial Examiner Diggs: Off the record.

(Statement off the record.)

(At the request of the witness the reporter read his preceding answer which was incomplete.)

13001

The Witness (continuing): Difficulties and evasions with the A.M.C. stores was not due to the fact that they had—

Mr. Martin: I object to that, your Honor. Please excuse me for interrupting.

Trial Examiner Diggs: Put your objection on the record.

Mr. Martin: I object as to what these things have to do with the controversy with the A.M.C. or with anybody else. What I think that this witness is here to answer is he was asked the question—

Trial Examiner Diggs: Off the record. That is enough.

(Statement off the record by Mr. Martin.)

13002

Trial Examiner Diggs: I overrule the objection in the economy of time and instruct the witness to confine his answer as near as he can to the statement of the dresses and when they were used. Now go ahead.

(The preceding portion of the witness's incomplete answer was thereupon read by reporter.)

The Witness: —no clear understanding as to how adjudications were being arrived at and he informed Mr. Kerstein that a plan of retail committees had been suggested, exclusively retail commit-

tees. Mr. Kerstein then said that he thought that all of the difficulty would be cleared up if the stores and the A.M.C. and other stores had confidence that these decisions were rendered by the committees that were impartial both as to that and as to selection and method of selection. Subsequent to that meeting I brought to the attention of the Board of Governors of the Fashion Guild a plan, which is the current plan, of adjudicating the question of piracy by exclusive retail committees. The method by which those committees function is as follows.

*By Mr. Albert.*

13004

Q. Before you get to that point, Mr. Post, will you explain, please, what the difficulty was that was referred to prior to the establishment of your retail piracy committees?

Mr. Martin: I object to it as irrelevant and immaterial.

Trial Examiner Diggs: I am going to let him answer, because we save time, I think.

A. Well, the difficulty prior to that conference was that we had in the meantime developed the plan of employing shoppers in the various cities. These shoppers were going into the stores and pointing out adjudged copies to the stores or the store personnel, and the stores would continue to sell these copies and blandly say, "Well, I don't think it is a copy" or "I don't know that it is a copy" and "Who said it was a copy?" or answer of that kind. That was what I referred to as the current difficulty in the fall of 1935 with this particular group of stores.

13005

Q. What was the work of these shoppers at this time?

A. The work of the shoppers at that time, and always has been, to locate in the stores in the stocks of the co-operat-

13006

*Albert M. Post—For Respondents—Direct.*

ing stores in their city such garments, bring them to the attention of the store and to report any piracy to remove them from the style.

Q. When was the— A. (interrupting) That, generally speaking, is their work. They were retained, handling our plans and forwarding to the Guild of plans from local stores that they believed a dress possessed by another retailer to be a copy, and as a matter of accumulating the work, the shopper would write in and tell us of it and on occasions where it was necessary to hold piracy meetings in their city, the shopper did the work of assembling the committee and securing the dresses and so forth and so on.

13007

Trial Examiner Diggs: That was before this last method of determination went into effect; I mean to say, their activities in getting together the committee?

The Witness: Yes, but before doing that, Mr. Examiner, there are occasions, as we will show later, where there are needs for local committees, rather than central committees in New York.

*By Mr. Albert.*

13008

Q. Will you now, as long as we are on the subject of shoppers, Mr. Post; will you explain in what manner a shopper operates in a particular city with respect to the knowledge of the retailers in that city of the identity of the shopper? A. The shopper is known to the retailer. We write them at the time she is employed; we give her a letter identifying herself; we request her to call upon all the retailers in the city as long as she is calling there, and factually we have never employed a shopper in any city without consultation with several retailers. They have aided us if—as we are in Seattle, as you know—and if we need a girl in Seattle, the only way we can find her is if we know who happened to be the retailers.

Q. That brings us down to the creation of your retail piracy committees as they exist today. Will you explain that? A. Well, as the result of the approval of the Board of Governors of the Fashion Guild we immediately contacted all the New York stores.

Trial Examiner Diggs: Give us the date of that?

The Witness: Well, in the fall of 1935. We contacted all New York stores and all New York buying offices and asked them if they would supply us with a list of their personnel, buying personnel, marking the particular field or subdivision within the industry that each individual buyer had knowledge of and was interested in. As a result of that letter or conference, letter and conference and meetings, my recollection is that we had within a few weeks a panel of about three hundred names divided into five general groups—inexpensive dresses, better dresses, sports dresses, coats and suits, party dresses, I believe—I am not clear at the moment on that. I might say, in passing, because it ties up with this point, that of course as we have gone along those lists have been largely increased. We have never done any more than ask the co-operation of the stores and offices in that regard; but as we have gone along the lists, it must be at least 1500 names at this time. In addition, on that point, we now contact the New York offices and ask for out of town buyers who are in New York, as reported in the Women's Wear and trade papers and ask if they will take an hour a day on one of the days they are down to augment these committees. We only do that, however, in those cases where in response to a letter that we wrote to stores—

Trial Examiner Diggs: What do you mean by "augment these committees"? You started off talking about something else now.

13012

*Albert M. Post—For Respondents—Direct.*

The Witness: I explained that we had panels and that we had—

Trial Examiner Diggs: Off the record.

(Discussion off the record.)

Mr. Albert: It is to augment the panel of the committee, your Honor.

Trial Examiner Diggs: We are going to adjourn for lunch now. We will meet at 12:45.

(Whereupon, at 12:05 o'clock P. M., a recess was taken until 12:45 o'clock P. M. of the same date.)

13013

#### AFTERNOON SESSION.

(The recess having expired, the hearing in the above-entitled matter was reconvened at 12:45 o'clock P. M., of the same day, and further proceedings were had therein as follows.)

ALBERT M. POST, the witness for the respondents, resuming the stand, testified further as follows:

*Direct examination (resumed) by Mr. Albert.*

13014

Q. Will you proceed with your explanation of the retail piracy committees, Mr. Post, please? A. They are composed of retailers whose names were given to us, divided as I have explained. Then, a week in advance five letters are sent out to five individuals whose names appear on these panels. The names are selected in rotation and each of these five divisions represent a classification of the industry with which that buyer is completely familiar. By sending out these requests for participation of personnel a week in advance, we accomplish the selection of a committee prior to any knowledge as to the garments to be

submitted to the interested manufacturers. The day before the committee meets, the office telephones to follow up and be sure that the buyer is available. I am mistaken, the day before, we send a post-card, the morning of the meeting, we telephone to the office or the store of the buyer. The committees meet every business day except Saturday at two o'clock in our office.

Q. Yes. A. That is the routine of selecting the committees.

Q. Prior to their appearance at the Guild, are the members of the proposed committee for a particular day informed of the names of the parties involved in the adjudication upon which they are being called? A. No.

Q. Now, what are the rights or privileges of the Guild manufacturer and of the non-member manufacturer with respect to the personnel of the committee? A. Well, skipping all the procedure by which the non-Guild manufacturer—the alleged copyist—is notified of the meeting and acquainted with the claim, and going directly to your question, the non-Guild manufacturer receives notice of the meeting by letter and telegram, I believe—certainly by telegram.

13016

And when he comes to the meeting, if, with or without cause, he is not satisfied with the personnel of the committee or does not wish to entrust his case to them for adjudication, he may object to that committee and not submit the garment to them. The procedure from then on is that he is then offered the panel of the next ten names. In other words, the two committees—the combined two committees that are to be called the following day and the next day succeeding. If he objects and then he is asked if he has any feeling about any of the retailers and would prefer, with or without call, not to submit his garments to them.

13017

If he rules out any two of the ten, then he is asked if he wants a special committee, and if so, he is given the

13018

*Albert M. Post—For Respondents—Direct.*

complete panel and asked if he can pick—I don't know exactly the number—but any given number of people from it that he would be satisfied with. If he does not wish to do that and says that there are no names or not a sufficient number of names on the total panel of 1500 retailers or thereabouts, that are satisfactory to him, he has the right of selecting an individual retailer, manufacturer or anybody else and—

Trial Examiner Diggs: Does he have to be a member of the Guild?

The Witness: No, sir.

13019

Trial Examiner Diggs: Or one who signed the declaration of co-operation?

The Witness: No, sir, they need not be a retailer, manufacturer, or in any way identified with the industry.

A. (Continuing) The Guild selects one person and those two are asked to select three additional people. I wish to add at this point that that procedure has never been invoked by anyone. There has never been a need for it, but, nevertheless, the procedure does provide for that arrangement if no other method can be found of finding the committee satisfactory to the non-Guild or alleged copyist.

13020

From that point on or assuming that a committee of some sort has been found to be satisfactory, either the regular committee or the subsequent committees that I have indicated, the garments and the interested manufacturers are presented to the committee. Both manufacturers offer their claims and the basis of their claims. Such things as orders, cutting tickets, deliveries, designing records, bills for trimmings, et cetera, are usually considered—are always considered, if offered. They are sometimes offered by both manufacturers to establish such claims as they may make to the origination of the garment.

*By Mr. Albert.*

Q. Would you include in that list of things which are offered to substantiate the claims, the advertisements of the respective parties? A. Yes, all such things including the registration form of the Fashion Guild Manufacturers which simply establishes his claim to the origination of the garment and the date upon which he made his claim.

The buyers serving as the committee, familiar with the markets and the facts and the conditions after hearing all the evidence, render their opinion. The opinion of the Committee is binding upon the Guild manufacturer without right for any reason to appeal. Incidentally, the piracy committees, as they came up in their normal course of rotation, must be accepted by the Guild member. He has no privilege of rejection similar to the non-Guild manufacturer.

13022

Now, after the adjudication or the decision as to whether or not the garment is in fact a copy— I have just said the non-Guild manufacturer has no right of appeal. I mean the Guild manufacturer has no right of appeal. The non-Guild manufacturer, however, may appeal. Appeals are taken to committees of three merchandise managers, store-owners or heads of New York offices.

Trial Examiner Diggs: Are they connected with the Guild in any way?

The Witness: Yes, they are co-operating retailers.

13023

Trial Examiner Diggs: Yes.

A. (Continuing) There is no rule as to whether they might be exclusively, but there has never been an occasion when a manufacturer has had a garment adjudged a copy, that he has not been satisfied with some three heads of New York offices, and when I say the heads of New York offices or store owners or merchandise managers in New York stores.

13024

*Albert M. Post—For Respondents—Direct.*

Now, in the event that the non-Guild manufacturer does not wish to appear before the Committee or does not come even if he may have indicated that he intended to come, the Guild manufacturer is precluded from any rights to appear before the Committee at all. The only thing that is offered to the committee in such a case are the two garments and such facts, both ways as either may have, and that in that regard they are usually ads, or claims or complaints of the stores involved on either side. What I mean by that is, the store possessing a garment which they don't believe is a copy or the store that is objecting to the garment because they think it is a copy.

13025

But the interested manufacturer is not permitted to appear before the committee. I believe that covers the routine in so far as the committees themselves go.

*By Mr. Albert.*

Q. Now, if the non-Guild manufacturer has not attended the meeting of the committee, what is the right of appeal?

A. The right to appeal of a non-Guild manufacturer who has received notice of the meeting and does not appear is that he may have an appeal anyway the first time and the second time in any six-month period or the first time in any second six-month period after the same situation has been ignored by him twice in the previous six months' period.

13026

If the record, therefore, shows that the manufacturer does not intend to come to the meetings and it has been that consistent, then appeals are only granted to manufacturers if they attend the first meeting, but always, twice within the first six months' period of the Guild, contact with that manufacturer, and always once in any subsequent six months' period.

Q. You said he is allowed to appeal anyway, Mr. Post, but I do not think you made yourself quite clear. Do you mean that, unless the record is as you have stated it, he

has no right to appeal? A. No, I do not mean that. I say he has a right to appeal—to ask for and secure an appeal before a committee of the appeal—the merchandise managers and store owners, but that if a man doesn't attend, if an alleged copyist or an adjudged copyist doesn't attend the meeting and then subsequently comes up and says, "I want a rehearing on this matter," if it is indicated that he never knew of the rule and had no contact with the Guild, why, he was granted it of course.

If again, within a six months' period the same situation happened, he is again granted a rehearing despite the fact that he did not appear at the first hearing even though he received, among other things, telegraphic notice of the meeting and knew of the complaint.

13028

He also had further knowledge of it which I haven't touched on because it is the thing I asked the question about before. After he has defaulted twice in appearance at the meeting, if within the six months' period he asks for a third rehearing, mind you I am not talking of the particular garment now, I am talking of subsequent garments, and it is obvious that he knows the procedure and is simply trying to evade it or get added delays by not appearing at the first meeting, then we do not grant an appeal unless it is an event that has happened more than six months since the previous two requests for a rehearing.

Q. Now, will you explain the mechanics of notifying a non-member whose dress has been charged to be a copy of a member, that a hearing will be held by the piracy committee and of the procedure and steps that are taken to secure his presence there, and to have a hearing upon the dress in the event that he refuses to submit the garment?

13029

A. When the Guild gets its complaint of an alleged copy and they come in from various sources—the shoppers receive them from the city—the retailers in their city or the retailers write us directly, we contact the involved manufacturer.

13030

*Albert M. Post—For Respondents—Direct.*

The complaints, when we know who the alleged copyist is, is one thing, and then there are complaints when we don't know, where a store advises the shopper that another store in their city has a dress which they consider to be a copy. And in that case, the shopper goes into the other store, having the alleged copy, and asks them who the manufacturer and model number is. Securing that information, he then goes to the alleged copyist. We show him a sketch—the registration form of the sketch, the second part which had been retained by the member.

13031

We say to him, "Have you a dress like this"? If he says, "Yes," we say, that there is a complaint that this dress is a copy of a registered origination of a member of the Fashion Guild. We advise him that there will be a meeting, that there is a meeting daily and does he wish to submit his dress to that committee for adjudication. That is the simplest form. Sometimes we show him a dress—the sketch in the same matter and he says, "No, I have nothing like that." In that case, we visit the shopper in the city of origin of complaint and ask her to go back to the store that complained to verify whether the complaint was made on the correct garment—on the correct model number as to the original.

13032

After that is verified, she goes back to the store alleged to possess the copy and asks them for the dress to verify whether or not, despite the manufacturer's statement that he has nothing like it, whether they say that they bought this particular garment from that manufacturer. If she advises us that there is no error in the name or model number, and that the garments appear to her to be the same and that the complaint appears to be justified, we then advise the alleged copyist again that despite his statement that he has no garment such as that, that blank store in such and such a city has such a dress which they say they bought from him. If he says then that he doesn't know anything about it and "I have no garment of that kind,"

we then wire the shopper to have an adjudication in that city and see, in the general procedure which is the same in principle as the one I have outlined in New York, secures the dresses and offers them to a retail committee in that city for adjudication.

When that decision is rendered, if it is adjudged to be a copy, the copyist manufacturer is then notified of that decision and offered an opportunity for rehearing in New York.

Like the question of an appeal, that is done only in two cases in any one six months' period—first six months' period, because again our experience has shown that if we followed it as a usual procedure, the manufacturers would not—would take advantage of the added time by always seeing that the first adjudications are held out of town. I think that that covers the situation. I am not sure now.

13034

Q. If the copyist manufacturer that you have just been referring to is not a New York manufacturer, what opportunity is given to him for a hearing after the hearing in the local city not in New York? A. Well, if the alleged copyist manufacturer is an out-of-town manufacturer, the hearings are always held in the city of residence of the non-Guild alleged copyist. Therefore, our members are deprived of any opportunity to be present at the hearings, but we say that they may and they usually do—the copyist may and usually does—appear before the retail committees in his city. It seems to me there was some other part to your question that I forgot now.

13035

Q. Has the shopper any discretionary power with respect to the adjudication of copies? A. The shopper has absolutely no discretionary power as to the adjudication of copies.

Q. What are her duties and her functions in that regard? A. Her duties in regard to—in that regard—are merely to advise the Guild of such complaints as are made by co-operating retailers within her city. Subsequently

13036

*Albert M. Post—For Respondents—Direct.*

after adjudication, where she receives a sketch of the adjudged copies—picture of the dress with the model number; the manufacturer and such other information as we have obtained, from that point, on and upon receipt of her sketch, her duty is to go around and shop the co-operating stores within her city to locate such of those copies as she can; to bring them to the attention of the buyer or management of the department; to request their removal from sale.

13037

Subsequently to report to the Guild any failure of a store to remove such copies from sale after notification. Those are her duties with the exception of what I have already mentioned in the unusual case where there is a piracy meeting to be held in her city.

Q. Now, Mr. Post, will you please trace the history and the development of the Guild from its formation to the present time? A. The formation of the Guild starts in the fall of 1931. At that time it was merely a small group of manufacturers who met at luncheons or in conferences to discuss the problems of their business and to seek each other's help and co-operation in finding solutions. As a result of these meetings and conferences which were the beginning of the Guild, it was decided to form an organization and incorporate.

13038

Some time in either March or February, 1932, the Fashion Originators Guild was incorporated under the laws of the State of New York.

From that early spring of 1932 through until the fall of 1932, the work of the Guild was fundamentally an attempt—by publicity, letters, ads, articles, to create an interest in clothes, and designing—American designers, and things of that kind; to deal with such unfair or predatory practices as were believed to exist in the industry at that time.

But there was nothing more than a general hope that by high-lighting these problems through publicity, contact

*Albert M. Post—For Respondents—Direct.*

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with retailers, discussion, that there would develop or evolve some plan to actually deal with the facts for their existence.

In the fall of 1932 as a result of these letters, conferences, communications, et cetera, there appeared to be the beginnings of formal conferences with retail groups, retail merchants, manufacturers, government officials, throughout the country and there evolved the plan of retail bureaus.

I believe the first one was proposed in the fall of 1932 around September. Prior to that, the contact of the Guild with retail groups had been largely through existing trade associations or Chambers of Commerce in the various cities. It appears that the idea of a retail Guild was made necessary because these retail associations with whom these matters had previously been discussed—

13040

(A discussion was then had off the record.)

Mr. Martin: I object, your Honor.

Trial Examiner Diggs: Objection overruled.

Mr. Martin: Note an exception.

Trial Examiner Diggs: All right, go ahead.

A. (Continuing) Were not primarily interested in ready-to-wear or the problems of ready-to-wear. From that beginning of consultation with retailers composed of retail Guilds, through the fall of 1932 and up to the early spring of 1933, these discussions, meetings, continued. I was at that time chairman of the Merchandising Division of the National Retail Dry Goods Association and a director of that association, and as such I contacted the Guild, worked with them on their plans.

13041

More than that, I did the work of the Fashion Originators Guild or in connection with the Fashion Originators Guild and the stores on State Street, Chicago, which are generally known as the State Street stores although I am not sure whether they are an association or just an infor-

13042

*Albert M. Post—For Respondents—Direct.*

mal group. We held meetings in Chicago, discussed the Guild program, how to make it effective, its advantages to us and on several occasions, both formally as a representative of that group of stores in Chicago and further as merely a merchant seeking to find a means of improving our business, I consulted with the Fashion Guild, with retailers, with the officials of the Fashion Guild and evolved, or helped them evolve its program and plans.

13043

I also kept the National Retail Dry Goods Association advised as to such progress and such plans. I also made arrangements for the appearance of Mr. Rentner who was then and now is president of the Fashion Guild, to address their annual convention and explain the Guild to the retailers who comprised the membership of the National Retail Dry Goods Association.

For many reasons, apparently the plan of organizing retail Guilds did not develop except in some few cases, but not a sufficient number or sufficient coverage to develop a workable, sound, practical plan.

13044

So, therefore, in the spring of 1933, it was decided that co-operation from retailers should be a matter of individual decision rather than attempt to shorten the work by group contacts. Part of the suggested contracts which had been offered for the retail Guilds were taken out and re-arranged into what has been generally called a declaration of co-operation and stores were advised of the Guild program specifically to the point of style piracy and their co-operation was sought.

From that point on, starting with about the first of July, 1933, the Guild's program continued pretty much in its present form. As I understand your question, Mr. Albert, I have answered it as to the general story of the Guild. I have not included any instances or specifications as to the evolution or the problems that came up.

Q. Now, will you describe the evolution of the declaration of co-operation and its use. A. Well, the evolution of

the declaration of co-operation is—start as I said with those paragraphs in the original proposed contract with the retail Guild dealing with style piracy. And then during that late fall of 1932 and through the early spring of 1933 when it was found that most stores were not interested in the formation of retail Guilds, and were not particularly interested in entering into contractual relationships with the Guilds or any other association, the Guild said that all it wished from retailers was acknowledgment of their policy regarding style piracy.

So that during the spring of 1933, the Guild received from—oh, several hundred retailers, perhaps five hundred—various letters in which they advised us of their policy regarding style piracy and their feelings about the Guild and its program.

13046

When June came along, in 1933, it was suggested that in order to be sure that everybody knew exactly what they were doing, that some form be prepared and the original form declaration was drawn by the attorneys or the executives of B. Altman & Company and Bloomingdales'.

Prior to that, as I said, there were shorter forms which had been evolved by different people after which somebody, having drawn a form and told other stores about it or told the Guild about it, other people may have used the same form.

The declaration of co-operation is merely a simple form for a store to advise us as to its policy. There is no requirement that any—

13047

Trial Examiner Diggs: I think the form speaks for itself. I do not think you need detail the contents of the form.

A. (Continuing) That any retailer sign any form of declaration of co-operation. The requirement, method of the Guild was merely that it be advised as to the store's

13048

*Albert M. Post—For Respondents—Direct.*

policy. The declarations were simply designed in order to facilitate the store's giving us such advice and the more recent declarations have gone into some particulars in order to make clear the program of the Guild so that a store using such form will comprehend as concisely as we are able to present the matter, exactly what they are doing.

13049

Trial Examiner Diggs: Let me ask you a question here. Let us assume that you go to a retailer and ask him to sign one of those declarations of co-operation and he says, "I will not sign it," and continues in that attitude. Will the members of your Guild continue to sell him?

The Witness: I don't think that is exactly a fair question.

Trial Examiner Diggs: Well, that is the question I want to ask you right now.

The Witness: Then repeat the question. Please repeat the question.

(The record was thereupon read.)

(A discussion was then had off the record.)

The Witness: If that is the way you wish to ask the question, the answer is yes.

Trial Examiner Diggs: Ask your next question.

*By Mr. Albert.*

13050

Q. In the event that a retailer—withdrawn. Is it necessary for a retailer to sign any declaration of co-operation of any kind? A. It is not.

Q. Is it sufficient for a retailer to state that he is in accordance with the policies of the Guild with respect to the services which it aims to accomplish and that he acts in a manner in keeping with his oral statement? A. It is.

Q. So that, if a retailer merely states that he is willing to co-operate and does co-operate, the members of the

Guild are perfectly willing and do sell him merchandise?  
A. That is correct. As a matter of fact, we have on record stores that simply send us a copy of their written policy and say, "This is the policy of our store and has been the policy of our store for some time," and that policy was clearly consistent with our program and was clearly opposed to the evil of style piracy, that was all we ever asked or expected from that store.

Q. In other words, the signature of the retailer is not the prerequisite to his doing business with members of the Guild? A. That is correct, it is not.

(At this point a short recess was taken.)

*By Mr. Albert.*

Q. I show you Commission's Exhibit No. 367-A and B, Mr. Post and ask you what that exhibit is? A. That is one of the form declarations of co-operation.

Mr. Albert: Off the record.

Examiner Diggs: Off the record.

(Discussion off the record.)

*By Mr. Albert.*

Q. At what time was that form prepared and issued?

A. It was prepared in the late fall of 1935, as a result of a suggestion that the program be clarified. To the best of my knowledge, it was never submitted to anyone until January, 1936.

Q. And to whom was it submitted at that time? A. I only have a recollection of two stores; one is R. H. White in Boston, the other is Strawbridge & Clothier in Philadelphia.

Q. Without giving us the details, will you relate generally, by reason of what facts that particular declaration of co-operation was sent for signature? A. Well, it was

13054

*Albert M. Post—For Respondents—Direct.*

sent to those two stores because they had advised us directly and through their New York office that they were not clear on what the Guild program was, and what they were supposed to do about it, so that the form was designed to clarify those points.

Mr. Albert: At this time, if your Honor please, I would like to offer in evidence the certificate of incorporation of the Fashion Originators Guild of America, Inc.

Trial Examiner Diggs: Do you concede that that is a copy, Mr. Martin.

Mr. Albert: That is a copy.

13055

Mr. Martin: Yes, if he says it is.

Trial Examiner Diggs: In other words, you have no objection?

Mr. Martin: I have no objection.

Trial Examiner Diggs: It may be admitted in evidence and marked Respondents' Exhibit No. 98.

(The certificate referred to was thereupon received in evidence and marked Respondents' Exhibits 98-A and B.)

*By Mr. Albert.*

Q. What customs and commercial usages has the Fashion Originators Guild in its program, in attempting to establish and maintain a uniformity and certainty? A. Well, the custom of honest advertising, the custom of originating goods, the custom of—

13056

Q. Has it done anything— A. (Continuing) I can't think of any others.

Q. Has it done anything with respect to returns? A. Yes, that's what it tried to prevent—unfair returns.

Q. Has it done anything with respect to group showings and group buying? A. It hasn't done anything about group buying, but it has as to group showings.

Q. Has it attempted to accomplish anything with respect to premature clearing dates? A. Yes; attempted to support retailers when they have gotten together on things—I mean on dates.

Q. Has it attempted to do anything with respect to fashion shows? A. Yes.

Q. Has it attempted to do anything with respect to establishing arbitration in the industry? A. Yes, that was part of the original program—arbitration.

Q. Has it attempted to do anything with respect to style piracy? A. Yes, it has.

Q. Now, Mr. Post, will you trace the history and development of the program of the Guild with respect to its purposes, since the beginning of the Guild? A. I am afraid I don't understand you.

13058

Q. Well, at one time the Guild permitted only certain manufacturers to become members, and thereafter permitted others?— A. That's not correct.

Q. (Continuing) Other manufacturers in certain price lines to become members. And it is the extension and broadening of the program of the Guild that I would like you to discuss now. A. Oh, I see what you mean. Well, originally the—when the Guild was organized, it was—it consisted of a small group. I don't recall how many there were in that group of incorporators, but it was less than fifteen; I know that. And they were all manufacturers within the better price range. By "better" I believe that that can be demarcated as making merchandise perhaps at \$29.50 and up, speaking generally.

13059

As the Guild, both as to organization and as to form, took fact, why, other manufacturers making merchandise not quite as expensive, became interested in it.

Trying to locate the period, I should say that in the fall of 1932 the manufacturers in the Guild—no, let me say the summer of 1932 that the manufacturers in the Guild were, according to my recollection, all better dress manu-

13060

*Albert M. Post—For Respondents—Direct.*

facturers, making goods at \$22.50 and up generally. When I say "generally," I mean in season, for out of season they make goods in low prices. Their general line was \$22.50 and up.

Now, somewhere during the late summer or early fall, coat manufacturers, textile firms became affiliated with the Guild. During that period there was a great deal of requests—there were a great many requests for inclusion in the Guild membership of manufacturers making goods in the price range of \$10.50 to \$16.50. However, no formal request was ever made of us either by manufacturers or any group of manufacturers.

13061

In the late fall of 1932 or the early—no, I am mistaken as to that. It must have been in the late spring of 1932 or the early fall of 1933—the previous 1932 should be 1933—a group of manufacturers who specialized in junior wear became affiliated with the Guild.

Also on or about that time, in other words some time in 1933—I am not clear at the moment which one came in first or just about when they did; I know they joined from April 1st to December 1st, 1933, these various groups—a group of sportswear manufacturers came in. Both of these latter groups made goods wholesaling at \$6.75 and up generally.

13062

In the summer of 1933 we had what I believe was the first of the so-called affiliate memberships as distinguished from regular membership—no, that wasn't membership, that was just affiliates. That was a group of \$10.50 manufacturers who had recently organized under the name of the Dress Creators League. They affiliated themselves with the Fashion Guild for the purpose of registering their styles—for design protection. They were not, at that time, members of the Guild, and were not members until June—July, 1935. July, 1935 they became affiliates members.

In November, 1935 a group of \$6.75, \$7.75 and \$8.75 manufacturers became affiliate members of the Guild.

Now, the only group that I think I have neglected is the knitwear group, that came in some time in 1934, I think, but I'd have to check the records to be sure on that.

Q. Will you— A. I just related the facts as to their membership, not the story of how they happened to, or anything of the kind. That's what I assumed your question was directed to.

Q. Yes. Now, will you relate for us the instances with respect to broadening of the Guild program to include the lower price lines? A. Well, starting with the original group and bringing them up to the fall of 1932, the membership was \$22.50 and up.

Q. At that time was there ever any policy on the part of the Guild not to include the lower-priced lines at any time? A. No, the reverse was so.

13064

Q. Will you explain the situation as it existed, with respect to the price lines at that time of the formation of the Guild? A. At that time the price lines were \$22.50 and up on dresses. It was only within that price range that there was any group of manufacturers who desired to co-operate with each other and with their customers in attempting to eliminate or relieve the industry of the unfair competition and the difficulties which they were facing.

Individual manufacturers below the price range of \$22.50 had indicated an interest, but nobody wanted to join, and the Guild didn't want anybody to join unless there was a fairly representative group. I mean by that, not represented as to numbers of volume, but simply enough people that had a common problem, because all these problems, while they were common to the industry as a whole, they took slightly different manifestations in each price range. Their business is highly specialized, and each problem applied itself to a particular branch of the industry with some slight demarcation of the problem—difference in the problem.

13065

13066

*Albert M. Post—For Respondents—Direct.*

However, from the fall of 1932 in September or thereabouts, retailers who were seeking the successful application of the plan were urging the Guild to encourage membership in the price range of \$10.50 to \$16.50, which was the price range immediately below the existing price range of the Guild manufacturers at that time.

13067

This information was conveyed to us by resolutions that were forwarded, by telegrams, by letters, by meetings and so on. They were the desire of the retailer to have design protection on \$10.50 goods; it was general through the country, as indicated by the various cities which urged upon the Guild the acceptance of membership within that price line—those price lines. Requests came from San Francisco as well as New York—just hitting the two extremes—from New Orleans to Minneapolis.

13068

Q. What was done about the situation of including the lower price lines at that time? A. Well, the \$10.50 manufacturers got together and formed an independent organization, which was known as the Dress Creators League. But the Guild, while it never declined membership, because it never had any request for such membership, on the other hand, it never solicited membership, and indicated that it felt that the problem of organizing the industry was sufficiently difficult, not to further complicate it at the beginning by trying to cover too much ground or having too many members. So that, in fairness, the Guild did not encourage an extension of its program to cover the \$10.50 people, although it was constantly being urged.

On the other hand, it never declined to do so, and that's proven, I think, among other things, by the acceptance of the junior group and the sportswear group, who made goods down to \$6.75 or \$7.75.

But the \$10.50 people formed their own organization, known as the Dress Creators League, and attempted to work out a program which paralleled the Guild.

In June of 1933 again when these declarations of co-operation had been suggested—were under discussion, the Guild was again urged to accept particularly \$10.50 manufacturers, on the claim that they were the big and important range to department stores—that was the price at which they bought most of their goods—dollar volume. And the Guild did agree that it would, as a preliminary step, establish a registration bureau by which non-members might register their styles in the same manner as Guild members, and have available to them the same mechanics, or such mechanics of adjudication as would—as would subsequently be evolved; that participation in the registration bureau did not involve membership and involved no obligation whatsoever except the payment of the fees and the living up to such rules as they—as were required by filing the affidavits and registering goods and so on and so forth.

13070

Except for these additions of—divisions—that I have mentioned, the Guild organization remained that way until 1935 when, as I have said previously, the Dress Creators League came in as a group along with a number of other \$10.50 manufacturers, or \$10.75 manufacturers, who were not members of the Dress Creators League.

Trial Examiner Diggs: Did they become full members then?

The Witness: No, they became protective affiliates. That means—

Mr. Martin: Was that the fall?

13071

The Witness: No, that was July, 1935. Now, there is a long story as to the evolution of that, but I merely stated as to the fact.

*By Mr. Albert.*

Q. Well, now, will you give us the story of the evolution with respect to that inclusion of the lower price lines,

13072

*Albert M. Post—For Respondents—Direct.*

without reference to the various exhibits, and letters, which are in support of the proposition which we will have later?

Trial Examiner Diggs: I do not think we will go into that. I think there is enough in the record now. I think we have enough of the circumstances connected with it. This opens up a field that is entirely too broad. It will not throw any light on any of the issues in this case. You may have an exception to that ruling. Off the record.

(Discussion off the record.)

13073

Mr. Albert: I move to strike all testimony on the part of all witnesses with respect to the expansion and broadening of the Guild program of the inclusion of price lines below \$16.75, of testimony with respect to the declarations of co-operation and all testimony of all witnesses other than the express testimony that the stores, which those witnesses represented, were at any time red carded.

Trial Examiner Diggs: Objection is overruled. The motion is denied, and you may have an exception. Off the record.

(Discussion off the record.)

Trial Examiner Diggs: We will take a short recess.

(A brief recess was thereupon taken.)

13074

*By Mr. Albert.*

Q. Mr. Post, did the Fashion Originators Guild red card Filene's? A. Yes.

Q. Did the Fashion Originators Guild red card Strawbridge & Clothier? A. Yes.

Q. Did the Fashion Originators Guild red card R. H. White? A. Yes.

Q. Did the Fashion Originators Guild red card Abraham & Strauss? A. Yes.

Q. Did the Fashion Originators Guild red card Bloomingdales? A. Yes.

Q. Did the Fashion Originators Guild red card J. L. Hudson? Did the Fashion Originators Guild red card Dayton Company? A. Yes.

Q. Did the Fashion Originators Guild red card the Emporium? A. Yes.

Q. What were the circumstances surrounding the red carding of those stores, and will you outline the reason therefor? A. Well, the circumstances begin with the situation regarding cheaper merchandise. That situation dates back to the fall of 1932 when retailers throughout the country, including some of the stores that you have mentioned urged upon the Guild the acceptance of membership of manufacturers making merchandise in the price range of \$10.50 to \$16.50.

13076

Such membership, however, was not accepted at that time and was not offered, although a registration bureau was set up in July or August, 1933 as being the first step, to secure design protection of merchandise within that price range.

As there was no obligation of membership for firms in that price range who made use of the registration bureau, there was no practical accomplishment that satisfied anyone, and the \$10.50 firms simply ceased to register their goods over a period of, I think it is about four months.

Subsequently in—I think it is either January or February of 1935—in any event, within a few months of my coming to New York to assume the responsibility of executive director of the Guild, I was invited to attend a meeting of the Association of Buying Offices.

13077

Trial Examiner Diggs: Off the record.

(Discussion off the record.)

Trial Examiner Diggs: The question which has been propounded to this witness calls for a very simple answer, and that is, the reasons why these

13078

*Albert M. Post—For Respondents—Direct.*

various stores were red carded. The witness is attempting now to go into an elaborate detail of matters which I have already ruled out, and the witness now will confine his answer to the question and state the reasons, if any, which he may have in mind as to why these people were red carded, and I am going to limit this question to that answer. You may have an exception.

Mr. Albert: I except to your Honor's ruling.

Trial Examiner Diggs: Off the record.

(Discussion off the record.)

13079

Trial Examiner Diggs: The witness will answer the question according to the outline which I have suggested.

Mr. Albert: Question withdrawn.

Trial Examiner Diggs: Ask your other questions, if you have any.

*By Mr. Albert.*

Q. Will you relate the circumstances under which these various stores previously mentioned, were red carded?

Mr. Martin: I object. Objected to as being irrelevant and immaterial.

13080

Trial Examiner Diggs: I am going to confine the witness' answer to the same restrictions as I have indicated in my other statement. Of course, this is an attempt to do indirectly what I have not permitted you to do directly. Bearing this in mind, the witness will answer. I overruled the objection of counsel for the Commission, subject however, to my restricted—subject to the restrictions which I have stated in my response.

*By Mr. Albert.*

Q. State the facts why they were red carded. A. The fact is that certain of those stores had refused to remove from sale certain specific copies which had been brought to their attention—certain others of the stores had stated that regardless of the broad policy of the store, as told to us, that they wished to limit their co-operation to certain price lines and that certain others of those stores were incorporated as to their policy and intent—in a notification received by the Guild from their representative in New York stating that they would no longer co-operate within certain price ranges and that after making every possible attempt to contact the store and find out: A. as to whether that letter sent by their New York representative was authorized, and B. what the policy of the store was, regardless of that letter—these facts were presented to the membership of the Guild, and they voted to discontinue doing business with those stores. 13082

Q. Were there any discussions had with any of the representatives of those stores prior to December of 1935 on the question of their co-operation?

Mr. Martin: Objected to.

Trial Examiner Diggs: Overruled. I will let him answer.

*By Mr. Albert.*

A. (Continuing) Either by correspondence or personally? A. Yes. 13083

Q. Will you relate for us—withdrawn. You have heard the testimony of Tiley—Messrs. Tiley, Bergdahl, Taylor, Sappington, Donovan, Miller and Segal, have you not, Mr. Post? A. I have, sir.

Q. And you have heard them testify with respect to the situation as it existed prior to the time when the instances which you have just related took place? A. I have, sir.

13084

*Albert M. Post—For Respondents—Direct.*

Q. Will you please tell us, in other words, what that situation was?

Mr. Martin: Now, I object to it, your Honor, on the ground that you have already ruled on that. He is asking exactly the same question.

Trial Examiner Diggs: Off the record.

(Discussion off the record.)

Trial Examiner Diggs: This is another attempt to do the very thing in another method—in another manner. But I ruled it cannot be done; that is to say, to go into these minute details concerning these various matters which I have already ruled out, and I sustain the objection, and counsel for the respondents may have an exception.

13085

Mr. Albert: I move to strike the testimony of Mr. Tiley, Mr. Bergdahl, Mr. Taylor, Mr. Sappington, Mr. Donovan, Mr. Miller, Mr. Segal, Mr. Plaut, in so far as the same relates to the facts with respect to which I have just attempted to interrogate the witness on the point of the circumstances surrounding and leading up to the red carding of the various stores who have testified on the matter.

Trial Examiner Diggs: Off the record.

(Discussion off the record.)

Trial Examiner Diggs: Motion is denied and you may have an exception. This witness has already testified as to the reasons for the boycotting of these particular individuals who have been referred to.

13086

Mr. Albert: At this time, if your Honor please, I would like to reserve an offer of proof with respect to the matter, inasmuch as I have been taken judicially by surprise by your Honor's ruling in order that the offer of proof may be as short as possible and yet contain all the matters necessary and relevant.

Trial Examiner Diggs: I am going to deny you any offer of proof in that instance, because I think it is so patent that it is not proper.

*By Mr. Albert.*

Q. Mr. Post, will you please explain what you mean by the use of the term "red carding"? A. Well—

Q. And what the mechanics are with respect to that term? A. Red carding simply means that there is a card system by which our members of the Guild are advised as to the policy of the various stores throughout the country. A red card simply signifies that that store has a policy of promoting copies, of not protecting design, or has consistently violated some previous statement of policy regarding the protection of design.

13088

Trial Examiner Diggs: And by that you mean, do you not, that they have refused to take off sale copies of the merchandise manufactured by members of the Guild?

The Witness: That would be included.

Trial Examiner Diggs: What else besides that would be included?

The Witness: Well, I said that they might have a policy of—have advised us that their policy was promoting copies in the instances of their having refused on a specific—

Trial Examiner Diggs: Any other grounds—

13089

The Witness: I beg your pardon?

Trial Examiner Diggs: Are there any other grounds for which they are red carded?

Mr. Albert: I object to the question on the ground that the only claim made by the Commission with respect to—

Trial Examiner Diggs: Off the record.

(Discussion off the record.)

13090

*Albert M. Post—For Respondents—Direct.*

Trial Examiner Diggs: Objection overruled.  
You may answer that.

Mr. Albert: Exception.

The Witness: Well, if a store has conducted its business in violation of laws—for example, like the tenement laws—operates, say, apartment-house shop in zone territory and in violation of city ordinances or state laws, red cards are issued in that case.

Trial Examiner Diggs: Any others?

The Witness: I believe that's all.

Trial Examiner Diggs: Ask your next question.

13091

*By Mr. Albert.*

Q. Now, will you explain the mechanics by which a red card is issued?

Trial Examiner Diggs: You may answer.

A. The mechanics is that a card is printed on a—a notation is printed on a red card and sent out to all the members.

*By Mr. Albert.*

13092

Q. Is the red card anything more to the members of the Guild than a method of notifying them of the fact that the retailer named thereon is unwilling to co-operate with the Guild in the furtherance of its program against style piracy? A. It is not. I have thought of a minor correction on the Examiner's question which I think ties up to your question, and I want to correct this. I believe that there may be some transactions where red cards were issued, although I know of none—recall none—that might involve one of the other practices which we consider to be unfair and predatory and destructive of the industry.

*Albert M. Post—For Respondents—Direct.*

13093

Now, I am trying to clear up that particular point, and I don't want any confusion on the record as to that.

(Discussion off the record.)

Trial Examiner Diggs: In view of the fact that counsel for the respondents has not, at this time, any available matter to be used in the examination of this witness, because of the fact that his line of testimony has been curtailed by certain rulings, I adjourn this hearing to 10 o'clock, January 14, at the same place.

(Thereupon, at 3.15 o'clock P. M., January 13, 1938, the hearing in the above-entitled matter was adjourned to 10 o'clock A. M., January 14, 1938.)

13094

Room 500, 45 Broadway,  
New York, N. Y.,  
January 14, 1938.

Met, pursuant to adjournment, 10 A. M.

Before: CHARLES F. DIGGS, *Trial Examiner.*

(Same Appearances)

13095

PROCEEDINGS.

Trial Examiner Diggs: You may proceed, gentlemen.

Mr. Albert: Please mark this for identification.

(The certain paper is thereupon marked for identification Respondents' Exhibit 99.)

Mr. Albert: If it please the Court, at this time I wish to offer into evidence Respondents' Exhibit 99 for identifica-

13096

*Albert M. Post—For Respondents—Direct.*

tion, which is a communication addressed to the Fashion Originators Guild of America by the Federal Trade Commission signed by Otis B. Johnson, dated July 17, 1935.

Mr. Martin: That is objected to on the ground that it is irrelevant and immaterial to the issues in this case. It refers to a prior investigation and has no connection with this case at all.

Trial Examiner Diggs: Objection sustained. You may have an exception.

13097

ALBERT M. POST, heretofore sworn and examined on behalf of the respondents, being recalled, testified as follows:

*Direct examination (resumed) by Mr. Albert.*

Q. Mr. Post, since July 17, 1935, has the program or the activities of the Fashion Originators Guild in the furtherance of its program been changed or altered?

Mr. Martin: Objected to.

Trial Examiner Diggs: Sustained. It makes no difference whether it has been or not. The date of the complaint is the date which fixes the status of this case.

13098

Mr. Albert: I offer to prove that if the witness had been permitted to answer the question he would have answered that the program and activities of the Guild as it existed as of July 17, 1935, had not been changed or altered in any material respect down to the institution of the present proceedings and down to the present date.

Mr. Martin: I move the offer of proof be denied.

Trial Examiner Diggs: It is denied.

Mr. Albert: Off the record.

(Discussion off the record.)

Mr. Albert: Now, if it please the Court, I call upon the attorneys for the Commission to produce the original Exhibit No. 481 for which Commission's 481 now in evidence was substituted as here in the record and pursuant to which the record reveals the same was to be held intact for such use as the respondents might care to make of the exhibit in their case.

Mr. Martin: If your Honor please, I know of no such ruling as that. The exhibit in evidence as 481 is the original exhibit offered and received in evidence. I have not in my possession the paper referred to by counsel for the respondents, nor am I able to produce it.

13100

(Discussion off the record.)

Trial Examiner Diggs: The matter of the exhibit referred to by counsel has been fully gone into in the record on pages 3512 and 3513, in which it appears that the exhibit now in evidence, marked Commission's Exhibit 481, is the exhibit which was ultimately admitted in evidence, and whatever may have appeared upon another paper is not in evidence and not proper that any reference should be made to it. I give counsel for the respondent an exception to this ruling.

(Discussion off the record.)

*By Mr. Albert.*

13101

Q. Now, Mr. Post, has the Guild at any time in the execution of its program attempted to in any manner fix prices at which either the manufacturer may sell dresses to the retailer or the retailer to the consumer? A. It has not in any way.

Q. Has the Fashion Originators Guild at any time required or advised or interested itself in the price at which

13102

*Albert M. Post—For Respondents—Direct.*

any manufacturer was to sell his dresses? A. It has not, directly or indirectly, or in any manner.

Q. And is it a fact that in so far as the Fashion Originators Guild is concerned any manufacturer may sell his dresses at any price, in any price line or in any manner in so far as the price is concerned which he deems fit. A. We have no interest in prices and he may do as he pleases.

Q. Has the Fashion Originators Guild of America at any time during its existence in any manner attempted to control or regulate the production on the part of its members? A. It has nothing whatever to do with production.

13103

Q. Has the Fashion Originators Guild of America at any time since its inception attempted in any manner to allocate or parcel out customers to its members? A. It has not.

Q. Or to in any manner assign territory to its members? A. No, they have not.

Q. Has the Fashion Originators Guild of America at all times attempted to encourage and permit free and active competition among its members for the retail trade? A. They have.

Q. Has the Fashion Originators Guild of America at any time attempted to in any manner interfere, advise or direct manufacturers with respect to the quality of the material which they use? A. No, they have not.

13104

Q. And as a matter of fact, has the Fashion Originators Guild of America since its inception strongly urged for the consideration of its members that the best of quality of materials be used wherever possible?

Mr. Martin: That is immaterial.

Trial Examiner Diggs: I sustain that objection. There is nothing in this complaint that could possibly have any relation to that.

*By Mr. Albert.*

Q. Has the Guild since its inception at any time acted in an arbitrary or unfair manner in the enforcement and furtherance of its program? A. It has not.

Q. At any time, Mr. Post, was there ever any understanding or secret agreement that lower price lines were not to be included in the Guild program?

Mr. Martin: Objected to.

Trial Examiner Diggs: I will let him answer.

A. No.

*By Mr. Albert.*

Q. Has the Fashion Originators Guild of America ever coerced or compelled manufacturers of ladies' garments to confine the sale of their merchandise to retail dealers who co-operate with the Guild? A. Well, members of the Fashion Originators Guild only sell their merchandise to stores who are co-operating with them.

Q. By that question I meant, is the sale confined to those who have expressed their co-operation in writing or will the Guild members sell their merchandise to any retailer even if he has not expressed his co-operation in writing, providing he does co-operate? A. Well, I wouldn't know. There is no such case. Anybody whose policy it is to co-operate has found it not objectionable or to state in writing.

Trial Examiner Diggs: That statement is in the form of a declaration of co-operation, isn't it?

The Witness: No, sir, not exclusively.

Trial Examiner Diggs: Well, the instances in which it is are very few, aren't they, as compared to the ones in which they send these declarations of co-operation prepared for the Guild.

13108

*Albert M. Post—For Respondents—Direct.*

The Witness: Why I should say there were very few in comparison to the total number.

*By Mr. Albert.*

Q. As a matter of fact, at the present time isn't it a fact that the department stores which are members of the A.M.C., and of which testimony has been taken in this case, have presently signified their co-operation with the Guild without the use of a form of a declaration of co-operation and that the Guild is selling them? A. That is correct.

13109

Q. There has been used in this proceeding, Mr. Post, the term "apartment house selling." Will you explain, please, what the evil of the apartment house selling was or the program of the Guild was with respect to it and what amelioration of the condition has resulted from the Guild program.

Mr. Martin: Objected to.

Trial Examiner Diggs: I sustain that objection on the same ground that at the beginning of the hearing on the 10th I announced my ruling that it does not make any difference what the object sought to be accomplished. There is the question whether the act itself is unlawful. You may have an exception.

13110

*By Mr. Albert.*

Q. There have been used in this proceeding, Mr. Post, the terms "unfair and improper returns," "improper cancellation of orders," "consignment selling," "unfair and excessive discounts," "rebates and subsidized advertising" and "fashion shows." Will you explain, please, what the evils of those terms were or the program of the Guild was with respect to them and what amelioration of the condition has resulted from the Guild program?

*Albert M. Post—For Respondents—Direct.*

13111

Mr. Martin: That is objected to on the ground that your Honor has ruled upon that, that that is immaterial to the issues of this case.

Trial Examiner Diggs: I am going to sustain the objection, and at the outset I may state that counsel has combined these items in one question at the suggestion of the Trial Examiner. I am sustaining the objection because it makes no difference as to the motive involved with respect to the various items stated nor the result which it is sought to have the witness relate, which have flown from the action of the Guild. The simple question is whether the acts enumerated constituted unlawful practices. If they do, the motive is not important. If they do not, it must obviously follow that the motive is not in any way involved. Counsel may have an exception to this ruling.

13112

(Discussion off the record.)

Trial Examiner Diggs: Counsel is now proposing to make a proffer of proof. Let the record show that counsel proposes to prove that the action of the respondents in relation to matters sought to be inquired into is done for the purpose of remedying evils existing in the trade and as a result of the action certain evils were remedied.

By Mr. Albert.

Q. Mr. Post, does the Guild require or necessitate that retailers return garments which have been adjudged copies? A. They do not.

13113

Q. Has the Guild any interest in what the retailer does with dresses which have been adjudged copies other than his compliance with his promise that he will not sell the same? A. We are interested to see that they are removed from sale.

13114

*Albert M. Post—For Respondents—Direct.*

Q. Does the Guild confine sales by its members to members of retail Guilds? A. No, it does not.

Q. Does the Guild restrict its manufacturers to purchasing textiles from the textile merchants group? A. It does not.

Q. Is the registration of textile designs with the Industrial Design Registration Bureau restricted to members of the textile affiliates?

Mr. Martin: Objected to. It is immaterial and irrelevant.

Trial Examiner Diggs: I will overrule it. Let him answer.

13115

A. No.

*By Mr. Albert.*

Q. Any manufacturer or textile man, whether a member of the Guild or not, may register such design?

Mr. Martin: Objected to.

Trial Examiner Diggs: That naturally follows. Go ahead and answer it.

A. A registration of design is not confined—

Trial Examiner Diggs: You have already said that. Now answer this question.

13116

The Witness: May I have the question?

(The reporter thereupon read the last question.)

Trial Examiner Diggs: The answer is yes or no.

The Witness: Yes.

*By Mr. Albert.*

Q. Mr. Post, I show you Commission's Exhibit 924, being a letter to you from Philip Reilly of the A.M.C. and ask if you will state the surrounding circumstances with

respect to the receipt of that letter by you, its despatch to you by Mr. Reilly and the incidents and events that followed the receipt of that letter.

Mr. Martin: I am going to object to that as being irrelevant and immaterial.

Trial Examiner Diggs: I sustain the objection. You may have an exception.

*By Mr. Albert.*

Q. I ask the same question, Mr. Post, with respect to Commission's Exhibits 863, 871, 872, 877, 878, 900, 906, 1018 A to E, inclusive, 912, 915, 916, 918 and 920.

13118

Mr. Martin: The same objection.

Trial Examiner Diggs: Objection sustained, for the reason that all of these exhibits have to do with the matter of including in the Guild's piracy program the lower price lines and the view expressed by me heretofore that the reasons for this are unimportant and the only question involved is whether or not the respondents applied their program to these items and the circumstances leading up to it are unimportant and immaterial; and counsel for the respondents may have an exception to this ruling.

Mr. Albert: Will you mark these for identification, please?

13119

(The three sheets referred to were thereupon marked for identification Respondents' Exhibits 100, 101 and 102, respectively.)

(Discussion off the record.)

Mr. Albert: If it please the Court, at this time I offer in evidence three letters, being Respondents' Exhibits 100, 101 and 102 for Identification, for the purpose of supporting the testimony of Mr.

13120

*Albert M. Post—For Respondents—Direct.*

Post to the effect that it is unnecessary for a retailer to sign any particular form of declaration of co-operation and demonstrating that a mere signification by a retailer in writing of his policy not to further style piracy is a sufficient declaration of his policy to make a co-operating retailer. In further support thereof, the respondent is prepared to introduce innumerable declarations of co-operations demonstrating that fact. A particular type of such declaration may be described as follows:

13121

The Wanamaker Store in Philadelphia, as its declaration of co-operation, merely send to the Guild a copy of its booklet in which appeared the printed statement that it was opposed to style piracy and would not do anything to assist in the sale of copies and would not sell copies. That is the substance of the paragraph.

That statement of the policy of the Wanamaker Store was and has been a sufficient declaration for the purposes of the Guild with its covering letter referring the Guild to that particular paragraph. So-called declarations of co-operations of this type have been in innumerable instances sent to the Guild and have been deemed satisfactory.

13122

Trial Examiner Diggs: You agree that this statement made by counsel correctly represents the fact, Mr. Martin?

Mr. Martin: I concede the fact that counsel for the respondents can produce numerous other letters signifying the intent of the writer to co-operate with the program of the Fashion Originators Guild.

Trial Examiner Diggs: I admit the three exhibits in evidence.

*Albert M. Post—For Respondents—Direct.*

13123

(The three letters referred to, heretofore marked for identification, were thereupon received in evidence as Respondents' Exhibits 100, 101 and 102, respectively.)

Trial Examiner Diggs: Suppose we adjourn for lunch. It is twelve o'clock and we will be back at 1 o'clock.

(Whereupon, at 12 o'clock noon, recess was taken until 1 o'clock P. M. of the same date)

#### AFTERNOON SESSION

13124

(The recess having expired, the hearing in the above-entitled matter was reconvened at 1 o'clock P. M., the same date, and further proceedings were had therein as follows:)

ALBERT M. POST, the witness for the respondents, resuming the stand, testified further as follows:

*Direct examination (resumed) by Mr. Albert.*

Q. Mr. Post, with respect to the refusal of the members of the Fashion Originators Guild to sell Strawbridge & Clothier, are you familiar with the circumstances of that action? A. I am.

Q. And are you familiar with the history of the relationship between Strawbridge & Clothier and the Fashion Originators Guild leading up to that action? A. I am.

13125

Mr. Albert: Will you mark these for identification? In groups?

(The papers referred to by counsel were thereupon marked for identification Respondents' Exhibits 103 to 117 inclusive.)

13126

*Albert M. Post—For Respondents—Direct.**By Mr. Albert.*

Q. I show you Respondents Exhibits 103 to 117, inclusive, and ask you if this represents the record of the transactions between Strawbridge & Clothier and the Fashion Originators Guild in the ordinary course of the business between Strawbridge & Clothier and the Fashion Originators Guild? A. Yes.

13127

Q. And do these letters to Strawbridge & Clothier and from representatives of Strawbridge & Clothier to you adequately and properly describe the events leading up to the red carding of Strawbridge & Clothier with such supplementary statements as are required by you in explanation thereof. A. They would.

Q. And do these exhibits contradict or tend to contradict the testimony of the representatives of Strawbridge & Clothier with respect to the reason for the red carding of Strawbridge & Clothier, their knowledge of the time of the red carding and of the incidents leading up thereto, and do they establish the fact that Strawbridge & Clothier voluntarily withdrew and canceled their previously declared declaration of co-operation against style piracy.

Mr. Martin: Objected to.

13128

Trial Examiner Diggs: Sustained because this is being asked to make a determination and a conclusion and an analysis of the contents of certain papers that is going to be drawn from the papers themselves, if at all. It isn't competent for this witness to undertake to do it.

Mr. Albert: I offer in evidence Respondents Exhibits 103 to 117, being correspondence in the ordinary course of business between Strawbridge & Clothier and the Fashion Originators Guild, consisting of various papers which are answers to and mention other exhibits presently in evidence.

Mr. Martin: Objected to on the ground that they are irrelevant and immaterial under the Examiner's ruling.

Trial Examiner Diggs: I am going to ask the witness a few questions.

By Trial Examiner Diggs.

Q. Strawbridge & Clothier or a representative of that firm testified that the Guild red carded them because they refused to disclose the name of the manufacturer from whom they had purchased an alleged copy of a garment manufactured by one of the members of the Guild. Do you remember that testimony? A. I do, sir.

13130

Q. Was that the reason they were red carded? A. That was not the reason they were red carded.

Q. What was the reason they were red carded? A. The reason that they were red carded was that they had consistently and over a period of time continued to sell copies of registered originations of the members of the Fashion Originators Guild and served notice that in the future their policy would be to sell copies of our goods.

Trial Examiner Diggs: I am going to sustain the objection to the introduction in evidence of these exhibits referred to, for several reasons. First, here we have fifteen exhibits which treat on a variety of subjects totally unrelated in many instances to the matters being inquired into, and many of them having no relevancy whatever to such matters; and the objection is further sustained for the reason that it is unimportant whether Strawbridge & Clothier were red carded because they refused to disclose the name of the dealer from whom they bought copies or whether they were red carded for having refused to discontinue selling copies. In either event, the fact

13131

13132

*Albert M. Post—For Respondents—Direct.*

remains that they were red carded and the fact remains that the Guild members refused to sell them, and I think it is immaterial as to all this mass of detail concerning the various incidents connected therewith, and this ruling accounts for it.

These exhibits were offered in bulk by counsel for respondents because of an indication by the trial examiner that the exhibits were not admissible and it was to avoid the unnecessary consumption of time which would have been required if they had been offered severally. The respondent may have an exception.

13133

Mr. Albert: Likewise, your Honor, in the light of your Honor's ruling, with respect to Strawbridge & Clothier, and in order to save the time of the Commission and the record on the matter, I now wish to offer some proof with respect to Hudson's, Dayton's, Bloomingdales, Abraham & Straus, the Boston Store, Kerns, Foreman's, Lazarus, Shillito, the Emporium, Taylor's, Rike-Kumler, Filenes, R. H. White, Stix-Baer & Fuller.

Trial Examiner Diggs: Now, as I understand it, counsel offers in evidence the correspondence relating to these various firms which is mentioned for the purpose of showing the circumstances connected with the red carding of these firms to the same effect as it was proposed in the case of Strawbridge & Clothier.

13134

*By Trial Examiner Diggs.*

Q. Was each of these firms whose names have been mentioned by counsel actually red carded by the Guild? A. Yes, sir.

Q. Now, was a red card—were they red carded because they refused to refrain from selling of garments manufac-

tured by members of the Guild? A. That is correct. I say that is correct. The actual fact is that in some cases we had no conferences, but they had notified us through the Reilly letter as of such and such a date they would not remove copies of Guild dresses at such and such a price, and I am trying to make my answer complete.

Trial Examiner Diggs: Then I sustain the objection to the admission in evidence of these letters, for the same reasons as I sustained the objection of the former proof, and the same comment which I made with respect of that proof I also—may also be considered in the ruling. Counsel for the respondents may have an exception.

12136

Mr. Albert: If your Honor please, I at this time offer to prove that with respect to all retailers who have been red carded with respect to which there is any testimony in this record, regardless of the reasons for the red card, I am prepared to offer documentary proof as to the existence of the evil as to the reasonableness of the Guild's conduct and as to the fair manner in which the Guild considered each particular case with full opportunity to the retailer to present his case, and I am making the offer of proof in this manner in the light of your Honor's general ruling that the matters sought to be presented by this proof are immaterial and irrelevant.

13137

Trial Examiner Diggs: The offer of proffer is refused and so far as proving the fairness of the investigations and the affording of an opportunity to the people who were red carded to appear and give testimony, Mr. Post has testified very fully on all methods which were used in that respect; and for the reasons that I have indicated before, I don't think that those matters are relevant, and counsel for the respondents may have an exception to this ruling.

13138

*Albert M. Post—For Respondents—Direct.*

Mr. Albert: This is off the record.  
(Discussion off the record.)

Trial Examiner Diggs: Counsel for the respondents has announced that because of the refusal of the Trial Examiner to admit certain testimony sought to be introduced on behalf of the respondents, that it has necessitated a recharting of the respondents' defense, and that this involves the preparation of certain exhibits the preparation of which will require considerable time, and that in order to avoid the expense and delay of continuing the case from day to day requests that the hearing be continued until January 24, 1938, and that in the event this is done, that the respondents will close their case on the 25th of January. In view of the statement of counsel for respondents and in the economy of time, the Trial Examiner feels that all interests will be best served by granting this request, and therefore this hearing is adjourned and will be resumed at 10 o'clock A. M., January 24, 1938, in Room 500, 45 Broadway, New York.

13139

(Thereupon, at 2 o'clock P. M., January 14, 1938, the hearing in the above-entitled matter was adjourned to January 24, 1938, at 10 o'clock A. M., in Room 500, 45 Broadway, New York.)

13140

*Albert M. Post—For Respondents—Direct.*

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13141

Room 500, 45 Broadway,  
New York, N. Y.,

January 24, 1938.

Met, pursuant to adjournment, 10 A. M.

Before: CHARLES F. DIGGS, *Trial Examiner.*

(Same Appearances)

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Trial Examiner Diggs: The attorney for respondents has just announced that Mr. Albert M. Post, the witness who was on the stand at the last hearing and who was to continue to testify this morning, is ill. 13142

Due to that fact, and by agreement of counsel for both sides, this hearing is adjourned until 10 o'clock A. M. on Friday, January 28, 1938, and will be held in the office of the Federal Trade Commission, Washington, D. C.

(Thereupon, at 10.30 o'clock A. M., January 24, 1938, the hearing in the above-entitled matter was adjourned to January 28, 1938, at 10 o'clock A. M., at the office of the Federal Trade Commission, Washington, D. C.)

13143

13144

*Albert M. Post—For Respondents—Direct.*

Room 424, Federal Trade Commission Bldg,  
Washington, D. C.,  
Tuesday, February 1, 1938.

Met, pursuant to adjournment, 10 A. M.

Before: CHARLES F. DIGGS, *Trial Examiner.*

(Same Appearances)

PROCEEDINGS.

13145

Examiner Diggs: The hearing is opened.

Mr. Martin: Will you mark these No. 1051 and 1052  
for Identification for the Commission?

(Whereupon the papers referred to were marked Commission's Exhibits 1051 and 1052 for Identification.)

Mr. Martin: If your Honor please, at this time, in accordance with the stipulation entered into with counsel for the respondents I offer in evidence as Commission's Exhibit No. 1051 a tabulation of the volume of sales for the year 1934 of seventy-eight dress manufacturers who were at any time during 1934 members of the Fashion Originators Guild.

13146

Column A shews the total volume of all such members for the entire year without regard to the fact that some members were members only a portion of the year.

Column B shows the total volume of such members for the period of the year 1934 that they were actual members.

I offer in evidence as Commission's Exhibit No. 1052 a similar tabulation for the year 1933 which shows the sales volume for the year 1933 of sixty-two members of the Fashion Originators Guild.

Column A represents the total volume for the entire year 1933 without regard to the fact that some of these sixty-two manufacturers were members for only a portion of the year.

Column B shows the total volume of these sixty-two members for the period only of 1933 during which they were members of the Guild.

Examiner Diggs: I understand it is stipulated between counsel that those figures set forth in these exhibits are correct and there is no objection to them being admitted? Is that correct?

Mr. Albert: No objection.

Examiner Diggs: They may be admitted in evidence. 13148

(Whereupon the said documents were marked Commission's Exhibits 1051 and 1052 in evidence.)

ALBERT M. POST, a witness on behalf of the respondents, having been previously sworn, was called to the stand and testified further as follows:

*Direct examination by Mr. Albert.*

Q. Mr. Post, I show you Respondents' Exhibit No. 118 for Identification and ask you if you know what that instrument is? A. I do.

Mr. Albert: Will you mark these 118, 119 and 120 for Identification? 13149

(Whereupon the said papers were marked Respondents' Exhibits 118, 119 and 120 for Identification.)

*By Mr. Albert.*

Q. What is it? A. It is the constitution and by-laws of the Fashion Originators Guild of America.

13150

*Albert M. Post—For Respondents—Direct.*

Mr. Albert: I offer Respondents' Exhibit No. 118 for identification in evidence.

*By Mr. Martin.*

Q. In effect as of what date? A. Well, it is the current one. It is in effect currently and has been in effect. I am trying to see the dates of the amendment. It has been in effect for at least a year or so.

*By Mr. Albert.*

13151

Q. And it includes all the section that have been in the Constitution since its inception, is that correct? A. Is what correct?

Q. It includes all the section that have been in the constitution since the inception of the Guild? A. Yes.

Mr. Martin: If your Honor please, I object to the introduction of this on the following grounds. It is quite obviously not the same constitution that was in effect at the time of the institution of this suit. According to Article Three, Section 4, the amendment, this is ratified May 28, 1936.

13152

Examiner Diggs: Objection sustained to the admission of this constitution in evidence for the reason that upon its face it shows that a great portion of it consists of amendments which were made after the date of the filing of the complaint in this case. Counsel for the respondents may have an exception to that ruling.

Mr. Albert: I offer in evidence such articles and sections of Respondents' Exhibit No. 118 as clearly appear to have been in force and existence at the time of the institution of the complaint and most respectfully except to the Examiner's statement that the greater part of the sections were passed afterwards. I think it is just the contrary.

Examiner Diggs: I do not think it is proper to put any paper containing matters which I have referred to are interwoven into other matters and then ask for certain portions to be admitted. I think the proper thing to do is to have an exhibit which contains matter which is relevant and should be admitted. I refuse to admit those portions for the reasons I have stated. You may have an exception to that.

Mr. Albert: I except also on the ground that the previous practice of the Commission has been to put in complete exhibits and to ask for the admission of only portions of such exhibits into evidence. I wish to specifically offer, I offer in evidence Respondents' Exhibit 118 excepting Article Three, Sections 4, 6 and 8; Article Five—

13154

Mr. Martin: If your Honor please—

Examiner Diggs: Off the record.

(Whereupon there was a discussion off the record.)

Examiner Diggs: Counsel is attempting to do exactly what I have just indicated he may not do. I have already passed on that question and we are not going to take up any more time on it. I have given him an exception. I refuse to admit portions of this paper and we gain nothing by a repetition of this same practice.

13155

*By Mr. Albert.*

Q. I show you Respondents' Exhibit No. 119, Mr. Post, and ask you if you know what that is? A. I do.

Q. What is it? A. These are the rules and regulations of the Fashion Originators Guild.

Q. From what time to what time? A. From the inception of the Guild up to date.

13156

*Albert M. Post—For Respondents—Direct.*

Mr. Albert: I offer in evidence Respondents Exhibit No. 119.

Mr. Martin: I object to the admission of this on two grounds. First, it does not purport to be all of the rules and resolutions as it is headed, "Important rules and resolutions."

I object secondly, on the ground that it has been testified by the witness Post that these are the rules and regulations in effect since the beginning of the Guild down to the present date.

There is nothing on the exhibit which shows the particular dates that any of these rules went in effect and there is no way of telling which of these rules have been passed subsequently and adopted subsequent to the institution of this action.

13157

Examiner Diggs: Let me ask the witness a question.

*By Examiner Diggs.*

Q. Do you know when those various regulations which are set forth in this exhibit were passed or agreed to by the Guild? A. You mean, do I know each one specifically? As to the date?

Q. Yes. A. Well, I know them but I cannot at this moment testify to that.

13158

Q. Do you know whether any of them were put into effect or agreed upon after April, 1936? A. Yes.

Q. Were they? A. Yes.

Examiner Diggs: I am going to rule that no regulations which take effect after the date of the institution of these proceedings are relevant, and I am going to confine the exhibit only to such regulations as were in effect at the time and prior to the date of filing of the complaint.

*Albert M. Post—For Respondents—Direct.*

13159

Mr. Albert: Now, if it please the Court, I move to strike all of the testimony introduced by the Federal Trade Commission in behalf of its affirmative case with respect to matters, facts and issues and incidents occurring after the institution of the Federal Trade Commission's complaint.

Examiner Diggs: The motion is denied. Those matters may be admissible in order to show a continuance of the practice.

*By Mr. Albert.*

Q. Mr. Post, I show you Respondents' Exhibit No. 119, page 2, under the heading of "Group Showing" and ask you whether or not that resolution was in force and effect at the time of the institution of the Commission's complaint? A. It was. 13160

Examiner Diggs: Now, just a minute. I am not going to take up the time of this hearing by having counsel interrogate the witness on each item of this exhibit. The proper thing to do is to make up an exhibit, in order to meet the ruling, which contains your regulations which were in effect at the time of the issuance of the complaint and prior thereto. I am not going to extend this hearing, as it will be if this practice is extended. You may have an exception to that.

13161

*By Mr. Albert.*

Q. I show you, Mr. Post, Respondents' Exhibit No. 118 and ask you whether or not Article 1, Section 1, was in force and effect at the time of the institution of the complaint?

Examiner Diggs: I now state to counsel it is useless for him to undertake, to continuously under-

13162

*Albert M. Post—For Respondents—Direct.*

take to do things indirectly which I said he could not do directly. I will not not tolerate this any further.

*By Mr. Albert.*

Q. I show you Respondents' Exhibit No. 120, Mr. Post, and ask you if you know what that is? A. I do.

Q. What is it? A. The Shoppers Manual.

Q. And will you explain generally what that is and what you mean by Shoppers Manual? A. It is the book containing instructions and advices and specimen forms used by the Guild in its shopping services. This book is sent out to the shoppers to acquaint them with the Guild and their jobs.

13163

Q. And was that manual in force and effect at the time the Commission commenced its complaint? A. I believe so.

Mr. Albert: I offer in evidence Respondents' Exhibit No. 120.

*By Examiner Diggs.*

Q. This was in force and effect in the same shape it now appears in? A. I can't answer that. I don't know.

*By Mr. Martin.*

13164

Q. Does it contain all of the general instructions issued to the shoppers up to the present date? A. Yes.

Mr. Martin: The same objection is made to this exhibit as to the two previous ones on the ground that it contains instructions which are currently in use and matter arising after the institution of this complaint.

*By Examiner Diggs.*

Q. Are there any instructions contained in here which have been put in force and effect since the filing of this complaint? A. I am afraid I cannot answer that.

Examiner Diggs: I sustain the objection unless it is shown this record which is now sought to be introduced in evidence contains the instructions to shopper which were in force and effect at the date of or prior to the date of the filing of the complaint. I do not think it is admissible and the witness evidently 'doesn't know whether it contains matter which was inserted subsequent to the date of the complaint or not. I sustain the objection and you may have an exception.

13166

*By Mr. Albert.*

Q. Mr. Post, I show you Respondents' Exhibit No. 121 for Identification and ask whether or not you know what that is? A. I do.

Q. What is it? A. It is the report I prepared of firms available to the A.M.C. during the period of red carding of 1936 and 1937.

Q. And will you tell us please, what investigation you made with respect to those resources? A. Well, we made a complete investigation of all the directories, trade books, chambers of commerce, all such information that was available anywhere in the country.

13167

Q. And as a result of such investigation, Mr. Post, what did you find? A. Well, in a total, that for that period there were 423 firms that were available who made goods at \$16.50 or up who were not members of the Guild and therefore, available for any firms who were or were not co-operative retailers in the Fashion Guild Program.

Q. How many firms were there available to the A.M.C. pursuant to Commission Exhibit 450-H? A. Ninety-eight.

13168

*Albert M. Post—For Respondents—Direct.*

Q. How many out-of-town manufacturers did you find available to the A.M.C.? A. -148.

Q. That is New York? A. I am sorry, 100.

13169

Q. And were there any others you found available to the A.M.C.? A. Well, there were seventeen firms who were members of the Fashion Guild during some time of that period that were available to the A.M.C. or any other non-signatory retailer during the period of the same time they were not members of the Fashion Guild. And then, of course, there were 148 New York firms that we located that were in business that were not included either in a guild membership or A.M.C. list, which is known as Commission's Exhibit 450. This is the sum total of those manufacturers, of the verified sources. The list was considerably larger but we were not able to verify all of the people or all of the names available.

Q. What was the total number of resources available to the A.M.C. during the period of red carding? A. You mean of \$16.50 and up?

Q. Yes. A. Well, we located about 750, I think, but we were not able for reasons of time to verify any more than this.

Q. How many did you verify as actually being in existence by your records, investigation and examination? A. 423.

13170

Q. Now I show you approximately sixty-three directories and guides, including as a typical example, "Fairchild's Women's Wear," the "Women's Wear Daily," "Dress Buyers Directory," "Nugent's Directory," "The Review," "Where to Buy in Los Angeles," "The Spring Directory of Style Creators of Chicago," "The Boston Market," "Review Buyers Directory," "The Fashion Buyers Guide," "The Buyers Informant," "Sheldon's Manufacturing Trade," "Women's Wear Daily," "The Buyers' Secretary," and I ask you whether or not the sixty-two directories here on the desk, some of which I have named, were

in regular use and effect for the period covered by your investigation revealing and reflecting the existence of the number of manufacturers available to the A.M.C. with respect to which you have testified as reflected in Respondents' Exhibit No. 121? A. Yes. Except that those directories cover the three-year period and this particular study covers just this one year here in total. If you mean when you say the period I investigated, you don't mean particularly investigated as to this single exhibit.

Q. And have you records with you which will reveal the names of the 423 firms reflected in Respondents' Exhibit No. 121? A. I have.

Q. And if called upon to do so can you identify each of the 423? A. I can.

Examiner Diggs: I do not think it is proper examination. I think we have gone far enough on this.

(Whereupon there was a discussion off the record.)

Mr. Albert: I offer in evidence approximately sixty-three directories used as a basis for compiling Respondents' Exhibit No. 121.

Mr. Martin: Are you offering Exhibit No. 121 in evidence?

Mr. Albert: You're right, I'm sorry. I offer in evidence Respondents' Exhibit No. 121.

Mr. Martin: That is objected to as being incompetent. The witness has already testified that the total number of manufacturers were 423. This exhibit here is simply a reiteration of his testimony and we have no chance, no way in the world for cross-examination as to who composed the supposed number of manufacturers.

(Whereupon there was a discussion off the record.)

13174

*Albert M. Post—For Respondents—Direct.*

Examiner Diggs: Counsel withdraws the exhibit.

Mr. Albert: I now offer in evidence approximately sixty-three directories used as a basis for the testimony of Mr. Post with respect to the existence of 423 firms available to the A.M.C. during the period of red carding.

Examiner Diggs: Any objection?

Mr. Martin: Yes, sir, I object to that.

Examiner Diggs: I sustain the objection on several grounds. First, there is no testimony showing the authenticity of these records. In the second place you are encumbering the record with all these booklets which serve no good purpose. The witness has already testified concerning his investigations and I do not think those books lend anything to it. You may have an exception.

13175

Mr. Albert: Exception.

*By Mr. Albert.*

Q. Mr. Post, have you made a notation of the names of the 423 firms with respect to which you have testified, including their addresses? A. I have.

Q. Do you know those names without referring to any notation you have made? A. I could not recite them. Is that what you mean?

13176

Q. Yes. Will you refresh your recollection from such notes as you may have with respect to the names of those manufacturers and let us have the names of the 423 names of the 423 manufacturers who were in existence during the period previously referred to by you?

(Whereupon there was a discussion off the record.)

Examiner Diggs: Does counsel mean to say he is going to have this witness recited in this record 423 names?

Mr. Albert: Yes.

Examiner Diggs: Well, I am not going to permit this to be done. I am going to ask the witness a few questions myself.

By Examiner Diggs.

Q. Mr. Post, these cards which I hold in my hand were prepared by you, were they, or under your supervision?  
A. They were, sir.

Q. And do those cards contain the names of the 423 manufacturers about whom you testified? A. They do.

Q. And you know of your personal knowledge after investigation that the persons whose names appear on these cards were manufacturers whose stock was available to the A.M.C. during the period which you have testified? A. I do, sir. 13178

Examiner Diggs: I will admit those cards in evidence but I will not admit the witness to detail those 423 people.

Mr. Albert: May they go in as one exhibit?

Examiner Diggs: Yes, one exhibit.

Mr. Albert: That will be respondents' exhibit.

Examiner Diggs: I understand you offer in evidence these cards which have been marked Respondents' Exhibit No. 122, is that correct?

Mr. Albert: Yes.

Examiner Diggs: Any objection?

Mr. Martin: No objection. 13179

Examiner Diggs: They may be admitted in evidence and marked Respondents' Exhibit No. 122.

(Whereupon the said exhibit was marked Commission's Exhibit 122 in evidence.)

13180

*Albert M. Post—For Respondents—Direct.**By Mr. Albert.*

Q. Now, Mr. Post, have you made an investigation to determine the number of manufacturers making goods including the \$16.50 price line in 1935? A. I did.

Q. And as a result of that investigation with respect to which you have previously testified how many manufacturers did you find making dresses including a \$16.50 price line in 1935 in New York? A. 321.

Q. And how many out of town? By that meaning out of New York. A. 183.

Q. And the total thereof being 504? A. Yes.

13181

Q. How many manufacturers were there in the Guild in any part of 1935 making \$16.50 or over merchandise? A. Any part of 1935, there were 111 New York manufacturers.

Q. And how many were there out of town? A. And out-of-town manufacturers were ten, making a total of 121.

Q. And what is the percentage of firms in the Guild compared to the total of any part of 1935 making \$16.50 and over merchandise?

Examiner Diggs: That is a matter of mathematics. I don't think we will go over that. The figures will speak for themselves.

*By Mr. Albert.*

13182

Q. How many manufacturers were there in the Guild for the entire year of 1935 making \$16.50 or over merchandise? A. Seventy-six.

Q. In New York? A. In New York, yes. And five out of town. Making a total of eighty-one.

Q. And that information was obtained in the same manner that you obtained the previous information, by examination of directories and Code Authority records? A. That is correct.

*Albert M. Post—For Respondents—Direct.*

13183

Q. And that examination was made either by yourself or directly under your supervision? A. Yes.

Q. And the examination of the directors and the Code Authority—

Mr. Martin (interposing): Now, suppose you ask him and not tell him, Mr. Albert?

Examiner Diggs: I do not think you ought to lead the witness.

By Mr. Albert.

Q. (Continuing) —and the records—

By Examiner Diggs.

13184

Q. (Interposing) Let me ask you this: Did you check up and find that the information was correct? A. I did most of the work myself; yes.

By Mr. Albert.

Q. And where was this information obtained from? A. From the same directors that we had here a few moments ago plus the Code records because the Code was in existence in 1935 and not in 1936.

Q. Did you make an examination of the Code Authority records of the dress industry under the National Industrial Recovery Act for the purpose of determining the number of firms registered by the Dress Code Authority for the year 1934 at the officially designated prices given by the Code? A. I did.

13185

Q. And generally where did you obtain such information? A. Specially I obtained it from the Code Authority records and the records of the certified public accountants who were responsible for the audits of that record.

Mr. Albert: Will you mark this Respondents' Exhibit No. 123 for Identification?

13186

*Albert M. Post—For Respondents—Direct.*

(Whereupon the said paper was marked Respondents' Exhibit 123 for Identification.)

*By Mr. Albert.*

Q. From the official reports of the Code Authority? A. That is correct.

Q. Now, Mr. Post, will you be good enough to explain the headings of Respondents' Exhibit No. 123 for Identification?

(Whereupon there was a discussion off the record.)

13187

Mr. Albert: I offer in evidence Respondents' Exhibit No. 123.

Mr. Martin: I object to it as being irrelevant and incompetent and hearsay. There are no means afforded the Commission of checking the truth of it and it is not the best evidence.

Examiner Diggs: I subscribe to everything that counsel for the Commission has stated but in view of the fact I have admitted an exhibit for him, to wit, Bergdahl, Commission's Exhibit No. 941, an exhibit which was prepared from sources similar to the sources used by this witness and by the same method. I admitted when I admitted that, I stated I did not think it was competent. But I admitted it and I will admit this on the same theory and think it is subject to the same vice as the other. It may be admitted and counsel's objection is overruled.

13188

(Whereupon the said exhibit was marked Respondents' Exhibit 123 in evidence.)

Mr. Albert: I offer into evidence, if it please the Court, the 504 cards bearing the names of the manufacturers who were in business in 1935 in the

price line of \$16.50 or over, to which Mr. Post has previously testified.

Examiner Diggs: Are these cards which are being handed me, which were marked Respondents' Exhibit 124 for Identification, prepared by you or under your direction?

The Witness: Yes, sir.

Mr. Albert: Will you mark this Respondents' Exhibit No. 124?

(Whereupon the said exhibit was marked Respondents' Exhibit 124 for Identification.)

*By Examiner Diggs.*

13190

Q. And do they contain the names of the various manufacturers described by counsel? A. That is correct.

Q. This is a correct list? A. Yes.

Q. Did you check up to find out if it is correct? A. Yes.

Examiner Diggs: Any objection?

Mr. Martin: No objection.

Examiner Diggs: It may be admitted and it will be marked Respondents' Exhibit No. 124 in evidence.

(Whereupon the said exhibit was marked Respondents' Exhibit 124 in evidence.)

*By Mr. Albert.*

13191

Q. Mr. Post, directing your attention to Commission's Exhibits 450-A and 941, have you in any way attempted to determine the volume of business done by the firms mentioned in Commission's Exhibit 450-A and to which Mr. Bergdahl had reference in Commission's Exhibit No. 941? A. Yes, I did.

13192

*Albert M. Post—For Respondents—Direct.*

Q. What did you do for that purpose? A. We secured information on all the firms listed on there as to the volume of business done through the existing credit agencies and secured the financial statements.

Q. How many firms doing business in the price lines of \$16.75 and up did you obtain credit ratings on? A. I should say about forty or fifty.

Q. As a result of your investigations have you been able to make any estimate of the volume of business done by any of the firms listed in Commission's Exhibit No. 450-A? A. Yes.

13193

Q. Will you explain what that is? A. Commission's Exhibit No. 450 listed all those manufacturers. And we found, first of all, there were ninety-eight manufacturers, individual manufacturers, listed as making \$16.50 or up goods. Of those ninety-eight firms sixty-one, according to Exhibit No. 450, made goods at \$16.75 and up. In other words, their names are not listed prior to 450-H, 450-B being the page of Commission's Exhibit No. 450 where the \$16.75 price starts. Of the sixty-one firms in that category we were able to get financial statements on twenty-five of them that gave the actual volume. All the financial statements do not include volume figures. Of these twenty-five firms, the total of their volume was \$3,919,915. That made an average business for the twenty-five firms of \$156,000 and from there we projected an estimate for the sixty-one firms.

13194

Q. Have you the names of the twenty-five firms to which you refer? A. Oh, yes.

Examiner Diggs: We will adjourn for lunch until 2 o'clock.

(Whereupon the hearing in the above-entitled matter was adjourned at 11.45 to reconvene at P. M.)

## AFTERNOON SESSION.

(At 2.15 P. M., pursuant to the taking of the recess, the hearing in the above-entitled matter was reconvened.)

ALBERT M. POST resumed.

*By Mr. Albert.*

Q. Mr. Post, I show you Respondents' Exhibit No. 125 for Identification and ask you what that exhibit contains?

A. That is the names of the sixty-one firms appearing on Commission's Exhibit 450-H and the subsequent letters who are listed on that exhibit as being manufacturers making the \$16.50 or higher goods. It also contains the volume of twenty-five of those sixty-one as reported by the credit agencies.

13196

Q. To what credit agencies do you refer? A. Dun & Bradstreet and the National Credit.

Q. Do those credit agencies report those figures as they are contained in Respondents' Exhibit No. 125 for Identification? A. Yes, except for this, in some few cases there were parts of the year reported. In other words, eight months of the year, or something like that. And there were about six of them, if I remember correctly. And those were computed on the basis we have heretofore used on these exhibits, so many twelfths multiplied by twelve.

13197

Mr. Albert: Will you mark that for identification?

(Whereupon the exhibit was marked Respondents' Exhibit 125 for Identification.)

Mr. Albert: I offer in evidence Respondents' Exhibit No. 125 for Identification.

Mr. Martin: It is objected to on the ground that it is hearsay. Secondly, on the ground it does not

13198

*Albert M. Post—For Respondents—Direct.*

show for what period the figures given are to be taken, whether it is the year 1933, 1934, 1935 or 1936, or for what portion or any portion of those periods. And thirdly, on the ground it has no probative value.

(Whereupon there was a discussion off the record.)

Examiner Diggs: I will pass on this objection after counsel finishes examining the witness.

*By Mr. Albert.*

13199 Q. Mr. Post, for what years are the figures opposite the various firms that you obtained from the credit agencies as named in Respondents' Exhibit No. 125? A. For the year 1935.

Q. And they so represent the dollar volume for that year? A. Yes.

Mr. Martin: May I ask a few questions?

*By Mr. Martin.*

Q. Do those credit reports make due allowance for returns? A. They say, "net volume."

Q. Do they make due allowances for piece good sales?

A. I do not know.

Q. Do they make allowances for suits? A. I do not know.

13200

Q. Do they make allowances for coats? A. No. I believe they report the volume done.

Examiner Diggs: Well, I am going to overrule the objection and let this exhibit in for what it is worth. The way the record stands the witness Bergdahl in Exhibit No. 450 gave a list of certain dealers who are now set forth in this exhibit, Respondents' Exhibit No. 125. Then in Bergdahl's

*Albert M. Post—For Respondents—Direct.*

13201

Exhibit No. 941 he attempted to testify as to the approximate volume of business done by non-members only during the year 1935.

Mr. Martin: No, by the entire industry.

Examiner Diggs: Well, put it that way, "By the entire industry in 1935."

Now counsel for the respondent proposes to show that twenty-five, that the list contained in Respondents' Exhibit No. 125, in so far as there are any figures, shows a greater volume for the people so indicated than the total approximate volume found by the witness Bergdahl. Now I think it is competent for counsel for the respondent to make that showing.

13202

I overrule the objection and the paper will be admitted in evidence. And counsel for the Commission may have an exception.

*By Mr. Albert.*

Q. Now, Mr. Post, have you ever attempted to obtain figures for other houses listed on Commission's Exhibit No. 450-H in the same manner as you obtained figures for the firms listed on Respondents' Exhibit No. 125? A. I have.

Q. And how many other firms have you obtained figures for and what are their classification as to the price line? A. There were ninety-eight firms in total and sixty-eight firms accounted for as not making below \$16.75. That left thirty-seven firms making \$16.75 and below. Of those thirty-seven firms we were able to secure figures on seventeen of them.

13203

Mr. Albert: Will you mark this Respondents' Exhibit No. 126 for Identification?

(Whereupon the said paper was marked Respondents' Exhibit 126 for Identification.)

13204

*Albert M. Post—For Respondents—Direct.**By Mr. Albert.*

Q. And are the seventeen firms you referred to, together with the credit agency volume reported on them, reflected in Respondents' Exhibit No. 126 for Identification? A. Yes.

Q. And are the figures set forth in Respondents' Exhibit No. 126 for Identification, the volume for those firms for 1935 as reported by Dun and Bradstreet's and the National Credit Agency? A. With the same qualifications as I made on the previous exhibit, No. 125, that some few of those firms who are not reported for the full year 1935 but were reported for a specified number of months. And  
13205 in those cases we computed the annual volume of so many twelfths multiplied by twelve.

Mr. Albert: I offer Respondents' Exhibit No. 126 in evidence.

*By Mr. Martin.*

Q. Where did you get those figures from? A. The same source, Dun & Bradstreet.

Q. Are they actual figures or the estimated figures from what they gave you? A. They are the actual figures.

Q. Do they take into consideration piece goods sales? A. They are the sales reported of those manufacturers, as dress manufacturers.

Q. Do they take in coats or suits? A. I doubt if they made coats. I don't know that. The record does not show that they do.  
13206

Q. Do you know whether or not any allowance has been made for those, if they made them? A. The figures are the annual volume done by those firms.

Q. Including everything that they manufactured and sold? A. Including everything they manufactured and sold, or sell.

*Albert M. Post—For Respondents—Direct.*

13207

Mr. Martin: Same objection, Judge.

Examiner Diggs: Same ruling. Admitted for the same reasons. The paper will be admitted in evidence and counsel for the Commission may have an exception.

(Whereupon the said exhibit was marked Respondents' Exhibit 126 in evidence.)

Mr. Albert: Will you mark this Respondents' Exhibit No. 127 for Identification (stack of sheets)?

(Whereupon the above indicated paper was marked Respondents' Exhibit 127 for Identification.)

13208

*By Mr. Albert.*

Q. Now, Mr. Post, I show you Respondents' Exhibits 127-A to blank for Identification and ask you to explain what that exhibit is and what it contains? A. These are the sheets that were taken from the official records of the National Industrial Recovery Authority or Agency, as it was called, indicating the purchase of labels by all manufacturers registered under the Dress Code Authority and the information as to their price designation for the year 1934. The sheets are made up from their records but are segregated so that each sheet or collection of sheets shows all the manufacturers or their records by each individual price designation.

13209

Q. These sheets show the name of the manufacturer, the designated Code price range, the Code rating, and the number of labels purchased by each manufacturer named for the year 1934? A. That is correct. And it has a summary at the bottom of each price range.

Q. And those sheets are—

Mr. Martin: Now, please don't lead him.

(Whereupon there was a discussion off the record.)

13210

*Albert M. Post—For Respondents—Direct.**By Mr. Albert.*

Q. Are those sheets an accurate transcript of the records as contained in the official information or Government report as prepared by the National Industrial Recovery Authority for the Dress Code? A. Well, the total of these sheets become the official report, if that is what you mean. The records are available but were never issued as individual reports. The total, the summarization of these records were issued as an official report and were so published by the Government.

13211

Q. The name of the manufacturer, the designated price range and the number of labels purchased as reflected in Respondents' Exhibit No. 127-A to blank for Identification is an accurate copy and transcript of the same record as it appears in United States Official Government report prepared under the supervision of the National Industrial Recovery Authority for the Dress Code Authority which was prepared by them pursuant to law? A. That is correct.

Mr. Albert: I offer Respondents' Exhibit No. 127-A to blank for Identification in evidence.

Mr. Martin: I object.

Examiner Diggs: Objection sustained for the reason that these papers can serve no useful purpose for the mere fact that some concern bought some labels does not prove anything. They may or may not have used the labels. I will give you an exception to that ruling.

13212

Mr. Albert: Will you mark these?

(Whereupon the papers indicated were marked Respondents' Exhibits 128 and 129 for Identification.)

*By Mr. Albert..*

Q. Mr. Post, I show you Respondents' Exhibit No. 128 for Identification and ask you to relate generally what that exhibit contains. A. This exhibit contains, first, the official record of the National Industrial Recovery Administration of the purchase of labels under the Dress Code Authority for the year 1934 by the designated price at which those labels were sold to dress manufacturers. I do not mean the price they paid for them but I mean the price merchandise they made, by the method they used for designating prices. It then goes on to show the number of labels purchased by members of the Guild in each of the price designated classification during the year 1934. That is to say, all members, all manufacturers who are members of the Guild for the full year. And it shows in the next column the per cent. of that to the total purchased. And the final tabulation on this exhibit shows the number of labels bought by Guild members during the period of their membership in the Guild by each of the prices designated, and what that total of labels purchased is to the grand total purchased in 1934 under the entire Code Authority. 13214

Q. I show you Respondents' Exhibit No. 129 for Identification, Mr. Post, and ask you what that exhibit is and what it contains? A. That is the exhibit that shows the labels.

(Whereupon there was a discussion off the record.) 13215

Examiner Diggs: Right here I am going to shorten this hearing. I do not think it is necessary we should repeat all this testimony. I have already indicated I am not going to admit the exhibits in evidence. I have already refused to admit one bearing on the same question. No good purpose is to be served by this interrogation. I am going to

13216

*Albert M. Post—For Respondents—Direct.*

give counsel his exception to my ruling but nothing is to be gained by following this any further. Make your tender and I will pass on it.

Mr. Albert: I offer Respondents' Exhibits Nos. 128 and 129 into evidence.

Mr. Martin: I object.

Examiner Diggs: Objection sustained and counsel for the respondent may have an exception.

Mr. Albert: Will you mark this, please?

(Whereupon the paper indicated was marked Respondents' Exhibit 130 for Identification.)

13217. *By Mr. Albert.*

Q. I show you Respondents' Exhibit No. 130 for Identification, Mr. Post, and ask you to explain what figures are contained on that exhibit and the manner of computing the same? A. The figures contained in this exhibit are the figures of sales volume for the entire dress industry for 1934, broken down into four direct categories and the subsequent category indicated as the house dress industry. The method of computation was to take the records of the National Industrial Recovery Authority and establish through the known factors the degree of error that would result from a simple multiplication of the purchases of labels by the Code designated prices when compared with the known net volume of the interested manufacturers.

13218

*By Examiner Diggs:*

Q. May I ask the witness a question right here? In other words, these computations, are they predicated upon the labels sold or furnished by the N.R.A. to the various manufacturers? A. Yes, sir.

Q. Then that obviously comes within the same ruling as I made before, ruling the testimony out with respect to this.

*Albert M. Post—For Respondents—Direct:*

13219

Mr. Albert: Do I understand your Honor——

Examiner Diggs: Off the record.

Mr. Albert: May I have this on the record?

Examiner Diggs: Let us have it off. Let us see what it is first.

(Whereupon a discussion was had off the record.)

Mr. Albert: Is it your Honor's ruling that you will permit no statement of an analysis by Mr. Post of his figures contained in Respondents' Exhibit No. 130 demonstrating the total dollar volume in the 16.75 and up of the entire industry, which figure is predicated in any way upon the figures of labels sold as recorded by the National Industrial Recovery Authority?

13220

Examiner Diggs: To make my position clear: I am going to refuse to permit the witness to testify and I am also going to refuse to permit in evidence any exhibit which has to do with the matter of labels furnished by the N.R.A. as being used as a basis for making a determination as to the volume of manufactured goods or sales.

Mr. Albert: No matter what that explanation may be?

Examiner Diggs: No. For the broad reason as I stated before, that the mere fact that the N.R.A. furnishes labels is no indication they were used or any indication that the goods were manufactured.

13221

Counsel may have an exception to that. And that applies to all those exhibits he is now referring to.

Mr. Albert: Will you mark these, please?

(Whereupon the indicated papers were marked Respondents' Exhibits 131, 132 and 133 in evidence.)

13222

*Albert M. Post—For Respondents—Direct.*

Mr. Albert: Now, Mr. Post—

(Whereupon there was a discussion off the record.)

Mr. Albert: If your Honor please, I now wish to offer in evidence Respondents' Exhibits 131, 132 and 133 for Identification, which exhibits respectively show the total dollar volume of the industry in 1933 of the various price lines and the total dollar volume done by Guild members in the respective price lines for the entire year, and the total dollar volume done by Guild members for the year 1933 for the period of their membership.

13223

Respondents' Exhibit 132 is the same exhibit reflecting the figures for 1934.

And Respondents' Exhibit No. 133 is the same figures for 1935.

(Whereupon there was a discussion off the record.)

13224

Examiner Diggs: I understand that counsel for the respondent has offered in evidence Respondents' Exhibits Nos. 131, 132 and 133, which are similar to those exhibits—which are in substance similar to those Exhibits 128, 129 and 130 in so far as the basis for the calculation concerned. That is, that in these last exhibits the basis upon which the calculations are made is the number of labels furnished by the N.R.A. And for the reason which I have indicated before I have excluded this entire line of testimony. I have refused to admit those exhibits in evidence and counsel may have an exception. Now you have your record absolutely clear.

*By Mr. Albert.*

Q. Now, Mr. Post, have you an opinion as to the total volume of business done in the dress industry in the year 1935? A. Yes.

Q. And upon what do you predicate that opinion? A. Well, the opinion is based upon a long and thorough knowledge of this business and the long study of the available sources of information, research, study, all kinds of reports.

Q. Will you mention what has been encompassed within your research? A. Well, the first thing, of course, were the records of the National Industrial Recovery Authority; records of the Department of Commerce; such records as we were able to secure from the Department of Labor; from the financial agencies which serve these industries; from figures compiled by the Federal Research Bureau; from figures compiled by the National Retail Trade Associations; figures compiled by the chambers of commerce; figures compiled by the chambers of commerce and the various trade associations within the industry; figures that we used in various investigations, legislative, judicial and administrative and that have been used in sworn testimony over a period of years.

13226

I have a feeling that is not the complete story but that is all that occurs to me at the moment. We went into every factor we could possibly find, as records of state and judicial hearings; administrative hearings, sworn testimony.

Examiner Diggs: Just don't go over them all. You have that already.

*By Mr. Albert.*

13227

Q. Now, specifically, have you used any particular record in forming your opinion as to the total volume of business done in the industry for 1935? A. Well, as to my opinion, no. I have used all the records. I compiled a report which was based upon one record but my opinion is based upon all of them.

13228

*Albert M. Post—For Respondents—Direct.*

Q. Is your opinion as to the total volume greater than the volume attempted to be placed into evidence by Respondents' Exhibit No. 133 for Identification? A. Oh, yes, substantially.

Q. What is your personal opinion as to the total dollar volume of the industry in the 16.76 and up during the year 1935?

Mr. Martin: That is objected to.

Examiner Diggs: Objection sustained. It would have been sustained to all of this line of testimony if it had been made. I do not think it is proper for the witness to give an opinion as to what the volume of business is. You may have an exception.

13229

Mr. Albert: I ask that the testimony of Bergdahl with respect to the total volume of the industry be stricken.

Examiner Diggs: I cannot carry his testimony in my head. I don't remember what Mr. Bergdahl's testimony is and I am not going to pass upon a motion of that sort without sufficient information to use as a basis.

(Whereupon there was a discussion off the record.)

Examiner Diggs: I deny the motion.

*By Mr. Albert.*

13230

Q. Now, Mr. Post, will you state as the result of your research and investigation what you found to be the total volume of the dress industry in the various price lines in respect to which we have been taking testimony, for the year 1935?

Mr. Martin: I object to that.

(Whereupon there was a discussion off the record.)

*Albert M. Post—For Respondents—Direct.*

13231

Examiner Diggs: The objection is overruled for the reason that the witness Bergdahl was permitted to say the very thing this witness is asked to do and while I do not think it was admissible at the time in the Bergdahl case, I did admit that and, therefore, I think this respondent may be given the same opportunity. So you may answer.

Mr. Albert: May I say something off the record?

(Whereupon there was a discussion off the record.)

Examiner Diggs: This hearing is adjourned until 10 o'clock to-morrow morning at this same place.

13232

(Whereupon the hearing in the above-entitled matter at 3.30 was adjourned to Wednesday, February 2, 1938.)

Room 424, Federal Trade Commission Bldg.,  
Washington, D. C.,  
Wednesday, February 2, 1938.

Met, pursuant to adjournment, at 10.15 A. M.

Before: CHARLES F. DIGGS, *Trial Examiner.*

(Same Appearances.)

13233

#### PROCEEDINGS.

ALBERT M. POST, a witness on behalf of the respondents, resumed the stand and testified further as follows:

*Direct examination (continued) by Mr. Albert.*

Q. Mr. Post, as a result of your researches and the investigations you personally have made or which have been

13234

*Albert M. Post—For Respondents—Direct.*

made under your personal supervision and direction, how many manufacturers have you found to have existed in the dress industry in 1934, and for the purpose of refreshing your recollection I show you Respondents' Exhibit No. 123. A. Well, in the total industry I found between thirty-two and thirty-four hundred manufacturers—thirty-four to thirty-five hundred probably.

Q. And the directories which were referred to yesterday were one of the sources of your information, is that correct? A. Yes.

(Whereupon there was a discussion off the record.)

13235

Examiner Diggs: Yesterday when counsel for the respondent sought to introduce in evidence sixty-five directories containing the names of manufacturers of various garments the offer was refused but no number was given these exhibits. For the purpose of clearing up the record I now direct the reporter to mark these exhibits Respondents' Exhibits Nos. 134 to 198 for Identification. I have already sustained an objection to the admission of these documents in evidence and have given counsel for the respondents' counsel an exception.

*By Mr. Albert.*

13236

Q. Mr. Post, do any one of these directories contain the names of more than 2800 individual separate manufacturers?

Mr. Martin: Objected to. The best evidence of that would be not what he says the directories contain but the directories themselves.

Examiner Diggs: I sustain the objection. The directories have been refused admission in evidence.

Mr. Albert: Exception.

*By Mr. Albert.*

Q. Now, Mr. Post, predicated upon the research and investigations which you have told us about yesterday, please state what you find to be the total volume of dresses sold in the industry for the years under discussion?

Mr. Martin: I object to that question. The ruling yesterday was that he could give his opinion as to what was the number but now he is trying to bring in something again based upon his investigations and research showing these sales of labels as to what he found to be the volume for the industry.

(Whereupon there was a discussion off the record.)

13238

Examiner Diggs: I am going to overrule the objection.

A. In 1933 it is my opinion——

Examiner Diggs: Now, wait a minute. It is not a question of opinion. The question is what did you discover as the result of your investigation to be the volume of business? That is the question.

A. I found the volume for 1933 to be \$680,000,000. For 1934, \$775,000,000. And for 1935, \$830,000,000.

*By Mr. Albert.*

Q. Will you tell us, Mr. Post, upon what facts you predicate that conclusion as to the total volume done?

13239

(Whereupon there was a discussion off the record.)

Mr. Martin: I object.

Examiner Diggs: I am going to overrule the objection and take the answer.

13240

*Albert M. Post—For Respondents—Direct.*

A. The basis of that information is contained in the Government bulletin printed by the—

*By Mr. Albert.*

Q. (Interposing) Give us the exact title of the bulletin, Mr. Post, please. A. It is the United States Department of Commerce, Bureau of the Census, Census of Manufacturers for 1935, "Women's Wear Apparel."

Q. Booklet No. 14? From the U. S. Government Printing Office? A. Pamphlet No. 14, United States Printing Office, prepared under the supervision of Laverne Beales, Chief Statistician.

13241

Q. And what did you find with respect to the volume in that U. S. Government booklet? A. They report—

Mr. Martin (interposing): I object.

Examiner Diggs: I think the book speaks for itself. I sustain the objection.

(Whereupon there was a discussion off the record.)

Examiner Diggs: In order to avoid the necessity of putting this pamphlet in evidence it is agreed, between counsel for both sides that page 4 of the pamphlet referred to contains the figure of \$476,203,527, for a total of 1,676 manufacturers.

*By Mr. Albert.*

13242

Q. What other figures and research, Mr. Post, form the foundation for your estimate of the total volume?

(Whereupon there was a discussion off the record.)

A. The figures of the National Credit Association.

Q. Where are those figures reported? A. They were reported in a booklet known as the Development of the Dress

Industry and then they were subsequently reported in recent years by correspondence, investigation and reports that they gave us.

Q. What is the figure contained in that report that you used as the basis for your estimate?

Mr. Martin: I object.

Examiner Diggs: Objection sustained.

Mr. Albert: Exception.

Examiner Diggs: The report is the best evidence.

Mr. Albert: Mark this for identification, please?

(Whereupon the said document was marked Respondents' Exhibit 199 for Identification.)

13244

*By Mr. Albert.*

Q. I show you Respondent's Exhibit No. 199 for Identification and ask you what that is? A. That is the booklet just referred to as entitled the Development of the Dress Industry published by the National Credit Association.

Q. I notice that that booklet has a figure for 1931. Is there a method of projecting that figure to determine the volume of 1935?

Mr. Martin: Objected to.

Examiner Diggs: Objection sustained.

Mr. Albert: I offer in evidence Respondents' Exhibit No. 199 for Identification.

Mr. Martin: Objection.

Examiner Diggs: Objection sustained.

13245

(Whereupon there was a discussion off the record.)

Mr. Albert: I offer to prove if the witness had been permitted to answer the question, the objection to which was sustained, the witness would have replied that there was a method of projecting the figure for 1931 to establish a figure for 1935.

13246

*Albert M. Post—For Respondents—Direct.*

Examiner Diggs: The proffer is refused.

Mr. Albert: Not stricken?

Examiner Diggs: No. It stands on the record but I refuse the proffer.

*By Mr. Albert.*

Q. What other records were used by you, Mr. Post, or information as a basis for your estimate? A. The published statements and reports of the Government and the N.R.A. not based upon label sales.

13247 Q. And what report is that? A. One report made by the Assistant Deputy Administrator Judson Ford and another by John Keating whose title at the moment I do not know. He started in as counsel up there and became Assistant Director.

Q. And what was the figure that they reported for 1935?

Mr. Martin: Objected to.

Examiner Diggs: Objection sustained. The report is the best evidence, of course.

*By Mr. Albert.*

Q. What is the name of the report to which you refer Mr. Post? A. "Results of the Administration of the Dress Code Fair Practice Provisions from May to December 1934."

13248 Q. What is the date of that report? A. January 10, 1935.

Q. By whom was it issued? A. Judson Ford.

(Whereupon there was a discussion off the record.)

Mr. Martin: I object to the admission of figures shown in a report gotten out by the—a report entitled "Results of the Administration of the Dress Code Fair Trade Practice Provisions from

May to December 1934, inclusive." I do not think these figures are admissible but I stipulate that the report estimates the annual volume of all markets in the United States at \$600,000,000.

(Whereupon there was a discussion off the record.)

Examiner Diggs: As I have indicated before, I think the report is admissible and therefore I overrule the objection and the figures stated by counsel may be taken as appearing in this report.

*By Mr. Albert.*

Q. Are there any other figures or reports, Mr. Post, that you used as a basis for your estimate? A. Well, there are no other figures that I have used for the basis of this previous testimony which I just gave as to the volume.

13250

Mr. Albert: Will you mark this, please?

(Whereupon the indicated document was marked Respondent's Exhibit 200 for Identification.)

*By Mr. Albert.*

Q. Now, Mr. Post, Mr. Bergdahl mentioned in connection with Commission's Exhibit No. 941 a report by Harrison & Serwer as the basis for his estimate. I show you Respondents' Exhibit No. 200 for Identification and ask you if that is the Harrison & Serwer report referred to? A. That is the Harrison & Serwer report.

13251

Mr. Martin: I move that the answer be stricken as obviously this witness cannot know.

Examiner Diggs: Objection sustained.

*By Mr. Albert.*

Q. Is there any other report issued by Harrison & Serwer for the year 1934 other than Respondents' Exhibit No. 200?

13252

*Albert M. Post—For Respondents—Direct.*

Mr. Martin: Objected to as irrelevant and immaterial.

(Whereupon there was a discussion off the record.)

Examiner Diggs: Objection sustained. It has not been shown that this witness possesses sufficient information to answer that question.

*By Mr. Albert.*

Q. Mr. Post, do you know whether Respondents' Exhibit No. 200 is the report to which Mr. Bergdahl referred, and if so please tell us what the basis of your knowledge is?

13253

(Whereupon there was a discussion off the record.)

A. I do know.

Q. What is the basis of your knowledge, Mr. Post? A. We got in touch with both Harrison & Serwer and the A.M.C. As a matter of fact they suggested that Harrison & Serwer prepared—

Mr. Martin: Objection.

Examiner Diggs: Objection sustained. The witness is undertaking to relate a conversation with somebody.

The Witness: That is the basis of how I know.

13254

*By Mr. Albert.*

Q. Will you tell us whom you had the conversation with, Mr. Post? A. Mr. Kaplan, attorney for Filene's Company. Mr. Serwer of Harrison & Serwer and Mr. Phil Reilly of the A.M.C.

Q. The Phil Reilly who is referred to in the testimony previously as executive director of the A.M.C.? A. That is the same Mr. Reilly.

Q. And what is the conversation you had with Mr. Reilly?

Mr. Martin: Objection.

Examiner Diggs: Objection sustained.

*By Mr. Albert.*

Q. What information did you obtain as the result of the conversation with Mr. Reilly and Mr. Kaplan, attorney for Filene's?

Mr. Martin: I object.

Examiner Diggs: Objection sustained. Obviously you are getting into a field you must know you cannot do that. 13256

Mr. Albert: I asked him—after what went in for the Commission out in the Middlewest as to conversations?

Examiner Diggs: It did not go in there when I was there.

(Whereupon there was a discussion off the record.)

*By Mr. Albert.*

Q. Did you have any conversation with Mr. Bergdahl about the Harrison & Serwer report? A. I did.

Q. What was that conversation?

Mr. Martin: I object.

13257

Examiner Diggs: Objection sustained.

(Whereupon there was a discussion of the record.)

*By Mr. Albert.*

Q. Mr. Post, did you have a conversation with Mr. Bergdahl with respect to the Harrison & Serwer figures mentioned by him?

Mr. Martin: Objected to.

13258

*Albert M. Post—For Respondents—Direct.**By Mr. Albert.*

Q. (continuing) as forming a basis for Commission's Exhibit No. 941?

Mr. Martin: I object.

Examiner Diggs: I am going to sustain the objection.

Mr. Albert: I offer to prove, if the witness had been permitted to answer the question, he would have answered that he had a conversation with Mr. Bergdahl; that he was informed by Mr. Bergdahl that Respondents' Exhibit No. 200 for Identification was the Harrison & Serwer Report to which Mr. Bergdahl referred as the basis for his figures in compiling Commission's Exhibit No. 941.

13259

Mr. Martin: I move that the offer of proof be denied.

Examiner Diggs: It is denied.

*By Mr. Albert.*

Q. Now, Mr. Post, what is Respondents' Exhibit No. 200?

Mr. Martin: Objected to.

(Whereupon there was a discussion off the record.)

Examiner Diggs: Go ahead. Give the answer.

13260

A. That is the Harrison & Serwer Report.

Q. No, no—what generally, does it contain?

Mr. Martin: Objected to.

Examiner Diggs: Sustained.

*By Mr. Albert.*

Q. Without mentioning figures, Mr. Post, will you tell us what the Harrison & Serwer report contains?

Mr. Martin: Objected to.

Examiner Diggs: Objection sustained.

(Whereupon there was a discussion off the record.)

Mr. Albert: I offer to prove——

(Whereupon there was a discussion off the record.)

Examiner Diggs: I refuse to permit any further offers of proof or questions concerning this exhibit.

Mr. Albert: Exception.

*By Mr. Albert.*

Q. Mr. Post, is there an estimate of total volume for 1934 in the dress industry known as the Harrison & Serwer Report? 13262

Mr. Martin: Objected to.

Examiner Diggs: Now I have already told counsel I do not propose to have any more questions about this Exhibit. Objection sustained.

*By Mr. Albert.*

Q. Now, Mr. Post, there is in evidence an exhibit known as Commission's Exhibit No. 941 purporting to be an estimate of the total volume of the dress industry for 1935. Predicated upon your research and investigation will you tell us what is wrong with that report?

Mr. Martin: Objected to. It is too general. 13263

Examiner Diggs: I sustain the objection to this extent: He may not state what is wrong but he may state what, in his opinion, is wrong.

*By Mr. Albert.*

Q. If you can qualify your answer in accordance with the Examiner's statement, do so. A. Well, first, in my

13264

*Albert M. Post—For Respondents—Direct.*

opinion the total volume recorded for Guild members is substantially wrong. The second thing that is wrong, taking the total figures, in my opinion is the total for the industry. The figures here are entirely inadequate, which obviously makes the percentage in the third column wrong. I have addressed my remarks so far merely to the totals in the three tabulations here. Going back to the items, the same comment that applied to the grand totals applies to each of the items. They are from 50 to 75 per cent. out.

13265

Q. Commission's Exhibit No. 941 shows that members of the Guild in the 16.75 and over price line did approximately \$741,870,000 total volume. How does that figure compare with the actual figures found by the Commission, of the Guild? A. Well, you have that in an exhibit. I don't know. I wouldn't trust my memory on it.

Examiner Diggs: I think that is a matter to be determined by consulting the exhibit. I do not think we will have the witness making these calculations. (Whereupon there was a discussion off the record.)

*By Mr. Albert.*

Q. Now, Mr. Post, did you have any conversation with Mr. Bergdahl with respect to Commissioner's Exhibit No. 941 which was introduced through Mr. Bergdahl and which represents his estimates of the total volume?

13266

Mr. Martin: I object.

Examiner Diggs: Objection sustained:

Mr. Albert: I offer to prove, if the witness had been——

Examiner Diggs: I won't accept any offer of proof on that sort of thing. It is very evident if this sort of practice is allowed this case could never come to a conclusion. We could go on forever. And

*Albert M. Post—For Respondents—Direct.*

13267

I am going to shorten it at least to that extent. I am not going to accept any offer of proof on any such matters.

(Whereupon there was a discussion off the record.)

*By Mr. Albert:*

Q. What did Mr. Bergdahl say to you about his preparation of Commission's Exhibit No. 941?

Mr. Martin: I object.

Examiner Diggs: Objection sustained.

Mr. Albert: Exception. I offer to prove—

Examiner Diggs: Do not take the offer. I have already made myself clear to counsel. I do not think it is necessary to repeat it any more.

13268

*By Mr. Albert:*

Q. Is there any other source of information upon which you predicated your estimate of total volume for the dress industry for 1935, Mr. Post? A. Yes.

Q. What is that source? A. The information published by the Union as to the percentage of change between the industry in 1934 as compared with 1935 and the supplemental figures on the same point by the Federal Reserve Bank and the figures published by the National Retail Dry Goods Association.

Q. To what Union do you refer? A. The union which is organized in the dress industry. 13269

Q. Can you give it to us by name?

Examiner Diggs: It doesn't make any difference what it is called.

The Witness: It is the Union in the industry.

Mr. Albert: There is only one in the dress industry.

13270

*Albert M. Post—For Respondents—Direct.**By Mr. Albert.*

Q. What is the percentage of change to which you have referred, and will you explain, Mr. Post, about the use of that percentage of change and how by the use of it you may project a known figure for 1934, or 1933, to obtain the total value for 1935?

Mr. Martin: That is objected to.

Examiner Diggs: I am going to let him answer. Go ahead.

*By the Witness.*

13271

A. Well, the method is to take a known figure and if you know what the percentage of change is, to apply that known percentage of change to the known figure and your resulting answer is the figure for the following year.

*By Mr. Albert.*

13272

Q. By the use of arbitrary figures, Mr. Post, will you explain, using a figure for 1934, what percentage of change is used to obtain your figure for 1935, using the arbitrary figure for the percentage of change so that we may graphically have it in the record? A. Assuming that the volume is a million dollars for 1934 and the percentage of change is ten per cent. increase, obviously that is a hundred thousand dollar increase in money and you add that \$100,000 to the known 1934 volume of one million dollars and therefore get the resulting answer of \$1,100,000. That is the method that is used.

Q. And do you know the names of the booklets or reports in which the percentage of change in the total industry between 1934 and 1935 was reported either by the Department of Commerce or the N.R.D.G.A. or the Union or the Federal Reserve Board? A. I am afraid I don't understand your question.

Q. You stated that the percentage of change in the industry had been published? A. That's right.

Q. Do you know the names of the booklets in which the percentage of change was published and from which you could figure? A. No.

Q. How can these booklets be obtained?

Examiner Diggs: I am not going to have this inquiry followed any further. We have wasted enough time on it already. Go to something else.

(Whereupon there was a discussion off the record.)

*By Mr. Albert.*

13274

Q. Is there any other source of information that you use in making your estimate of the total volume for 1935, Mr. Post? A. Well, the information is printed.

Examiner Diggs: It is a question of Yes or No. Is there any other information?

The Witness: Yes.

Examiner Diggs: What is it?

The Witness: The publicly printed trade journals that published those reports.

Examiner Diggs: Is there anything else?

*By Mr. Albert.*

Q. Is there any other compilation of figures which you have used prepared by any association for the purpose of arriving at your estimate of the total volume for 1935? A. Well, I used the figures of the chambers of commerce that were published.

13275

Q. Do you use the figures of any Guild?

Mr. Martin: If your Honor please that is objected to.

(Whereupon there was a discussion off the record.)

13276

*Albert M. Post—For Respondents—Direct.*

**Examiner Diggs:** This sort of examination must be shortened and I am going to attempt to do it.

*By Examiner Diggs.*

**Q. Mr. Witness,** will you recite now all the sources in addition to the ones you have already mentioned which you have used in order to arrive at these conclusions which you have stated? **A.** I show you Respondents' Exhibit—

**Q. (interposing)** Now wait a minute. Answer that question.

(Whereupon there was a discussion off the record.)

13277

*By the Witness.*

**A.** Yes. There was the information based upon our records of our own members.

*By Mr. Albert.*

**Q.** By your own members whom do you mean? **A.** Members of the Fashion Originators Guild.

**Q.** And was there any report prepared by the Fashion Originators Guild? **A.** There was.

**Q.** How is that report known in the record for reference? **A.** It is referred to as Respondents' Exhibit No. 133.

13278

**Q.** For Identification? **A.** For Identification.

**Q.** It was previously offered in this hearing? **A.** That's right.

**Q.** And what is the figure contained in the Fashion Originators Guild report, which formed part of the basis for your estimate, for the total volume of the industry for 1935?

**Mr. Martin:** Objected to.

**Examiner Diggs:** This is not a case where the usual rules apply because we are not asking him

*Albert M. Post—For Respondents—Direct.*

13279

now to recite the contents of a paper where the paper should be admitted but we are asking him for a specific figure. I overrule the objection to that extent.

The Witness: Will you repeat the question please?

(Whereupon the question was read by the reporter.)

A. You wish the amount?

*By Mr. Albert.*

Q. Yes, of the total industry and the total Guild figure.

A. The amount of the total industry is 708 million dollars. And the Guild figure is 87 million dollars. Those are the figures that are contained in Commission's Exhibit No. 1050. The latter is the figure that is contained in Commission's Exhibit No. 1050.

13280

Q. What is the total dollar volume for the industry in the 16.75 and up found by the Fashion Originators Guild which was used by you as a basis for computing your figures?

Mr. Martin: If your Honor please, I object to this, the Exhibit is in evidence. It speaks for itself.

(Whereupon there was a discussion off the record.)

Examiner Diggs: I sustain the objection. I permitted this witness just a moment ago to state a particular figure which was used by him. I did that for the reason that this simply showed the figure used and that I did not intend and it does not show the source or the attempted source from which it was obtained. I am going to let this inquiry be pursued no further because you are attempting to

13281

13282

*Albert M. Post—For Respondents—Direct.*

do indirectly a thing I said you could not do directly when this was offered in evidence. You may have an exception. Go ahead to something else.

*By Mr. Albert.*

Q. What is the figure, Mr. Post, which you used as the basis for your estimate as contained in Respondents' Exhibit No. 199?

Mr. Martin: I object.

Examiner Diggs: Objection sustained. I am not going to allow this inquiry any further.

13283

*By Mr. Albert.*

Q. Now, Mr. Post, predicated upon your estimates and the research which you have made will you give us the breakdown of your figures in the various price lines as to your estimate of the volume of business done on these price lines?

Mr. Martin: That is objected to.

Examiner Diggs: I overrule that objection and will take the answer.

*By the Witness.*

13284

A. For the year 1933 on the 16.75 and over, 82 million dollars. 10.75 to under 16.75, 98 million dollars. 6.75 to under 10.75, 120 million dollars. Below 6.75 is 380 million dollars—for a total of 680 million dollars for 1934—16.75 and over, 90 million dollars. 10.75 to under 16.75, 100 million dollars. 6.75 to under 10.75, 135 million dollars. Below 6.75, 450 million dollars—for a total of \$775,000,000. And for 1935, at 16.75 and over, 105 million dollars. 10.75 to under 16.75, 110 million dollars. 6.75 to under 10.75, 140 million dollars. Below 6.75, 475 million dollars—for a total of \$830,000,000.

*Albert M. Post—For Respondents—Direct.*

13285

Mr. Albert: I offer to prove the statistical method used by the Fashion Originators Guild in arriving at the computations contained in Respondents' Exhibit No. 131, 132 and 133 for identification.

Examiner Diggs: Which is based in part, as I understand it, upon these labels furnished by the N.R.A., is that correct?

Mr. Albert: That is correct.

Examiner Diggs: Then the proffer is refused.

Mr. Albert: Will you mark these?

(Whereupon the indicated documents were marked Respondents' Exhibits 201 and 202 for Identification.)

13286

*By Mr. Albert.*

Q. Mr. Post, we have introduced figures with respect to the Guild volume for the year 1935 in this case. Have you as executive director of the Guild in any other case introduced figures differing from those volume figures?

Mr. Martin: Objected to.

Examiner Diggs: Objection sustained.

*By Mr. Albert.*

Q. Did you testify in the case of William Filene & Sons Company against The Fashion Originators Guild of America in the First District Federal United States Court of Boston?

13287

Mr. Martin: Objected to.

Examiner Diggs: I not only sustain the objection but I now state to counsel I am not going to admit any matters having anything to do with the Filene case in this record as I have stated time and time again.

Mr. Albert: Will you mark this please.

13288

*Albert M. Post—For Respondents—Direct.*

(Whereupon the said document was marked Respondents' Exhibit 203 for Identification.)

*By Mr. Albert.*

Q. Mr. Post, I show you Respondents' Exhibit No. 203 for Identification and ask you what this is? A. A transcript of the record.

Q. Of what record? A. Of the record of the suit of William Filene's Sons Company versus Fashion Originators Guild.

Q. Is that the official transcript of the testimony of that case? A. It is.

13289

Mr. Martin: I object.

Examiner Diggs: Wait a minute. I want to listen.

Mr. Albert: I offer in evidence Respondents' Exhibit No. 203 for Identification.

Examiner Diggs: Objection sustained.

Mr. Albert (continuing): Not for the purpose of demonstrating the truth or falsity of the testimony therein contained but for the purpose of revealing to the Court by the testimony that the issues and matters passed upon by the United States District Court in Boston of the United States Circuit Court of Appeals for the Circuit are identical with the issues and matters which are before the Federal Trade Commission.

13290

Mr. Martin: I renew my objection.

Examiner Diggs: Objection sustained.

*By Mr. Albert.*

Q. Mr. Post, I show you Respondents' Exhibit No. 201 for Identification and ask you what that is? A. It is the record of design production for members of the Fashion Originators Guild by the years 1934 to 1937, inclusive.

Q. Is that the statistical compilation the result of complaints passed upon by the Fashion Originators Guild?

A. No, that is the number of registrations, statistical information and the number of registrants. I'm sorry; it also indicates the net number of copies; yes.

Q. And was that prepared under your supervision? A. Yes, it was.

Q. And is that an accurate recapitulation of the facts therein contained with respect to the adjudications? A. It is an accurate record for those four years.

Mr. Albert: I offer in evidence Respondents' Exhibit No. 201.

Mr. Martin: I object to it as irrelevant and immaterial and as already having been ruled on by his Honor when he announced that he would refuse to admit any testimony which would tend to show evils corrected by the Guild policy.

13292

(Whereupon there was a discussion off the record.)

Examiner Diggs: Counsel for the respondent states that the purpose of this exhibit is to show the good effects of the Guild's program. Am I right on that?

The Witness: That is right.

Examiner Diggs: Then the objection is sustained.

*By Mr. Albert.*

Q. I show you Respondents' Exhibit No. 202 for Identification, Mr. Post, and ask you what that is? A. That is a tabulation of style piracy which goes along with the previous exhibit except this completes the information. We only had it for two years and therefore had to make a separate report.

13293

13294

*Albert M. Post—For Respondents—Direct—Cross.**By Examiner Diggs.*

Q. The purpose of it is the same, Mr. Albert?

Mr. Albert: Yes, sir.

Mr. Martin: I object.

Examiner Diggs: I sustain the objection to that, too.

(Whereupon there was a discussion off the record.)

Examiner Diggs: We will adjourn to three o'clock. (Whereupon the hearing in the above entitled matter, at 11:50 was recessed until three o'clock P. M.)

13295

## AFTERNOON SESSION.

(At 3:05 P. M. the hearing in the above entitled matter was resumed and further testimony taken therein as follows:)

ALBER M. POST (resumed).

*Direct examination (continued).*

Mr. Albert: Are we convened, your Honor?

Examiner Diggs: Yes, you may proceed.

13296

Mr. Albert: The witness is yours, Mr. Martin.

*Cross-examination by Mr. Martin.*

Q. Mr. Post, did you make any investigation to determine the number of non-Guild manufacturers available to the red carded stores and especially available to the A.M.C. stores after they were red carded? A. I did.

Q. What investigation did you make? A. We made an investigation of all the manufacturers that are recorded

through all the trade directories and such supplementary information as was obtained through chambers of commerce, Code Authority records, and such additional information as we were able to acquire through conferences with buyers and people who are in the market. From that we compiled our list and subsequently it ~~was~~ transmitted into the exhibits.

Q. How many non-Guild manufacturers did you find were available?

Mr. Albert: May I ask that the question specify whether Mr. Martin is referring to the \$16.75 manufacturers or to the entire trade?

*By Mr. Martin.*

13298

Q. To the entire trade. How many non-Guild manufacturers did you find were available in the different price ranges, the total number? A. You mean in all the price range?

Q. In all the prices ranges? A. Well, somewhere between 3300 and 3500.

Q. Who were not members of the Guild? A. No, I'm sorry. That's the total. You have to take off about 150, speaking roughly. There never was that many. I am using round figures.

Q. Would you say there were 3150? A. No, I would say there were more than that.

Q. Would you say there were 3200? A. No, I would say there was between 3300 and 3500. 13299

Q. Well then, you do not wish to take off the 150, is that correct? A. I'm sorry Mr. Martin, you are quite right. I am getting mixed up. Yes, that would be right.

Q. 3150? A. Yes, that's right.

Q. Yesterday, I believe, you referred to 423 manufacturers available to those stores. In what price range were those manufacturers available? A. Those were the manu-

13300

*Albert M. Post—For Respondents—Cross.*

facturers who were available in the \$16.75 or up price range whom we were able to verify.

Q. How did you determine that these manufacturers these 423 manufacturers, were in the \$16.75 price range and up, were available? Did you use the same methods as you have testified to before? That is, were their names taken from trade directories and supplemental information the same as you answered to the first question? A. That's right.

Q. Were any of those manufacturers personally interviewed? A. Yes.

13301

Q. How many of them were interviewed? A. Well, would simply have to give my best guess on it. Around 50 probably.

Q. About 50 out of 423? A. That's right.

Q. And the rest of these names were simply taken from trade directories and information in the directories was taken as correct? A. Well, that is not quite right. I have been in this business a long time and I have bought a lot of merchandise and I think I have rather an intimate knowledge of the market and the people in it. I can tell you a good deal about these manufacturers from personal contacts.

Q. Do you know all of those 423 manufacturers? A. Well, I don't believe I know all of them, no. I know a great many. I have bought from a great many.

13302

Q. Did you make any investigation to determine the type of garment that these manufacturers made? A. I know that. Those that I know I know the type of garments they make.

Q. Which ones do you know the type of garment they made? A. I should say I have bought from and had personal contact with about 50 per cent. of the manufacturers.

Q. In other words you have bought from approximately 211 of these 423 manufacturers? A. Well, that is m

opinion Mr. Martin. You seem to be tying it down to exact figures. You understand I am giving—

Examiner Diggs: Just don't argue. Just make your statement.

By Mr. Martin.

Q. Do you know whether those manufacturers made daytime dresses, evening dresses, street dresses or half sizes? A. Those that I know I do know.

Q. Which ones do you know? That's what I am trying to find out.

Mr. Albert: That is objected to unless Mr. Martin refers to Respondents' Exhibit No. 122 in evidence.

13304

Examiner Diggs: The objection is overruled. He has the right to test this witness's knowledge concerning the sources of his information as testified for by him on his direct examination. He is not confined to any particular card.

By Mr. Martin.

Q. Do you know of your own personal knowledge that all of these manufacturers were actually in business at the time this compilation, or at the time to which this compilation relates? A. All those manufacturers were verified as being in business.

Q. How were they verified? A. Through many sources: A. The credit sources. B. The directories. C. The telephone books. D. The New York buying offices. E. In some cases by personal visits and reports of representatives who called on these manufacturers and called on the people who do business with them.

13305

Q. Do you assume— A. (Interposing) That is what I meant by "verification" when I used that word before, yesterday, when I used it yesterday.

13306

*Albert M. Post—For Respondents—Cross.*

Q. Did you assume from the fact that a manufacturer's name was listed in a book he was as a matter of fact engaged in the manufacture and sale of women's garments at the period of time referred to? A. No, not generally. We did in some cases.

Q. Did you make any investigation to determine the financial responsibility of those 423 manufacturers?

Mr. Albert: That is objected to as immaterial.

Examiner Diggs: Objection sustained.

(Whereupon there was a discussion off the record.)

13307 *By Mr. Martin.*

Q. Do you know of your own personal knowledge that these 423 manufacturers, alleged manufacturers, were actually engaged in the manufacture of women's dresses and garments and were available to those red-carded stores? Do you know that of your own personal knowledge? A. As I understand the words "personal knowledge," the answer is yes.

Q. Well, how do you understand the words "personal knowledge"? A. Well, information that I have in part secured myself or information that has been secured in the natural performance of my position or secured through agents or employees of Filene, or, rather, Fashion Originators Guild of America. I consider that and I understand it to be of my personal knowledge.

13308

Q. So your statement was based on information that was brought to you plus some investigations of your own, is that correct? A. That is correct.

Q. Do you know whether these manufacturers were equipped to turn out goods in volume?

Mr. Albert: That is objected to as immaterial.

Examiner Diggs: I think we ought to confine this discussion as to whether or not they did in fact turn them out.

*By Mr. Martin.*

Q. Do you know, Mr. Post, whether these manufacturers, whether the product of these manufacturers was generally handled by stores of the type of the A.M.C. stores?

Mr. Albert: That is objected to as immaterial.

Examiner Diggs: I will overrule that objection.

A. I definitely know.

*By Mr. Martin.*

Q. Were they or were they not the type of manufacturers handled by the A.M.C. stores? A. A great many of those manufacturers were being used, are being used and have been used by the A.M.C. stores over a period of time.

13310

Q. How many of them would you say have been used?

A. Well, I will be conservative and say at least fifty.

Q. At least fifty out of 423. Do you know, Mr. Post, whether the garments manufactured by those 423 manufacturers were known as high style garments?

Mr. Albert: That is objected to as immaterial.

Examiner Diggs: Of course, I cannot anticipate just what the object of this is. I overrule the objection and we will take the answer.

Mr. Albert: May I note my exception, your Honor, in that the question opens up the whole question of the principle upon which the Guild is formed, upon the protection of style.

13311

Examiner Diggs: You may have an exception.

The Witness: Will you repeat the question?

(Whereupon the question was read by the reporter.)

13312

*Albert M. Post—For Respondents—Cross.*

Mr. Albert: I further object unless the question includes the definition of what the questioner means by "high style."

Examiner Diggs: The objection is overruled.

A. I know that there are a number of manufacturers among those 423 who are known as producers of high style merchandise.

Q. Do you know anything of your own personal knowledge concerning the workmanship, the style and the fit of garments manufactured by these 423 manufacturers, Mr. Post?

13313

Mr. Albert: I object to that as immaterial.

Examiner Diggs: The objection is overruled. It may go to the question as to whether or not these alleged available resources would meet with the requirements of those people. I think it is pertinent. You may have an exception.

Mr. Albert: Exception.

A. I have stated I used these manufacturers. I know the A.M.C. does. I used to be associated with the A.M.C. as you know. I know they are making and have made a product which is acceptable to those stores, and which stores I have been associated with, on every basis within the categories that they fall.

13314

Q. How many of them would you say met those requirements? A. Well, if you want me to look through the list I will be very glad to.

(Whereupon there was a discussion off the record.)

A. There are 150 to 200. Ninety-eight would appear on the A.M.C. list and on the Commission's Exhibit 450.

(Whereupon there was a discussion off the record.)

A. (Continuing the previous answer) That is, that there are that many that I know of as being resources of the A.M.C. I am not dealing with any manufacturers that I may also know about that I do not know whether or not they were used by the A.M.C. That is the distinction in my answer. I may have knowledge myself of 300 of those manufacturers but I cannot say that the A.M.C. bought from all 300 of them.

Q. Are you familiar with Gordon Frocks? A. No, sir.

Q. Of Los Angeles? A. No, sir.

Q. Do you know what they make? A. No, sir.

Q. Are you familiar with the La Parisienne of San Francisco? A. No. I know only in the out of town manufacturers those people from whom I bought.

13316

Q. I understand that your testimony is that with regard to the manufacturers who are located outside the City of New York but are included in this list of manufacturers available your personal knowledge is limited to those from whom you may have bought or had business dealings with yourself? A. Well, with the last qualification to your question I will say, "Yes." Because, for example, living in Chicago, as I did, I had knowledge of most of the Chicago manufacturers although I did not buy from all of them. I used to go around with the buyers occasionally to see what they were making and they used to come out to the store to show me.

Q. Are you familiar with the T. H. Costume Company?

A. No.

13317

Q. Are you familiar with the Ben Linde? A. Linde?

Q. Right. A. Is that a New York manufacturer?

Q. I don't know.

Mr. Albert: May it appear that Mr. Martin is reading from Respondents' Exhibit No. 122?

Examiner Diggs: Oh, I don't think it is necessary to have it appear what he is reading from. I

13318

*Albert M. Post—For Respondents—Cross.*

do think we are wasting a lot of time on this line of examination.

Mr. Martin: If your Honor please, I simply want to find out this. This witness testified there are 423 manufacturers who were available. I want to find out how much he knows about those manufacturers.

Examiner Diggs: Go ahead.

Mr. Martin: I am trying to be just as brief as I can.

*By Mr. Martin.*

13319

Q. In answer to your question, Mr. Post, the card which is in evidence, Respondents' Exhibit No. 122 does not give his address. Are you familiar with that? A. I think that makes him a New York firm. I believe that's it, the firm I have in mind, that makes women's dresses in the price range of 12.75 to \$19.75, of a tailored type.

Q. Are you familiar with Raymond Costumes? A. No. I am not.

Q. Are you familiar with Saik & Linda? A. Yes.

Q. What do they make? A. They make a tailored type of dress similar to Linde except that they style a little bit lower. They style the \$10.75. I don't believe they go any higher than \$16.75.

13320

Q. Do you know anything about where the majority of that business would be?

Mr. Albert: That is objected to as immaterial.

Examiner Diggs: I will sustain that objection.

Mr. Martin: If your Honor please, he has testified that these are \$16.75 and up.

Examiner Diggs: Off the record.

(Whereupon a discussion was had off the record.)

Examiner Diggs: Read the question.

(Whereupon the question was read by the reporter:)

Mr. Martin: What is the answer?

Mr. Albert: Objection withdrawn.

A. Well, the major part of that business would be below the \$16.75 price range.

By Mr. Martin.

Q. Are you familiar with the firm of B. S. Simon? A. Simon or Salmon?

Q. Simon & Company. A. May I see that card please? (Looking at card) No.

13322

Q. Is it not a fact that your knowledge as to the type of garment manufactured, the price range, the quality of workmanship, the size and the availability of these 423 manufacturers is based for the great part on information such as directories, telephone books, and personal statements rather than your own personal knowledge? A. Yes.

Q. Do you know how many manufacturers making \$49.75 goods and over are in the year 1934 located in New York? A. You mean manufacturers who made \$49.75 and up goods exclusively?

Q. Yes. A. No, I don't know that.

Q. Do you know how many manufacturers making \$49.75 and up goods were members of the Guild in 1934?

A. I know there was no manufacturer, a member of the Guild, who made \$49.75 and up goods exclusively.

13323

Q. In the Guild? A. That's right.

Q. There was no manufacturer? A. There was no manufacturer.

Q. Then Respondents' Exhibit No. 123 which lists one manufacturer in that price range is incorrect? A. Oh, no, it is absolutely correct.

13324

*Albert M. Post—For Respondents—Cross.*

Q. Well, will you explain that please? A. Gladly. That is the listing based upon the manufacturers of the code designated price. That does not mean that the manufacturer listed as a 49.75 and up manufacturer made \$49.75 and up goods exclusively. That merely means that was the lowest regular price at which he made goods and for that reason he was designated as a \$49.75 manufacturer by the Code Authority at the time their records were compiled under the Industrial Recovery Act.

Q. And there was only one such manufacturer who belonged to the Guild? A. On their records there was only one such manufacturer.

13325

Q. Who was that manufacturer? A. Netty Rosenstein.

Q. Who is Hattie Carnegie? Was she a member of the Guild in the year 1934? A. Yes.

Q. Did she make \$49.75 and up goods? A. They made \$49.75 and up and \$49.75 and lower.

Q. Well, she would not buy labels for \$49.75 garments and put them on lower-priced ones, would she?

Examiner Diggs: Let us not get into this labeling anymore. I have kept it out of this all along.

Mr. Albert: I have no objection and I make no objection.

Examiner Diggs: I object to going into these labels again.

13326

*By Mr. Martin.*

Q. Was Jo Copeland a member of the Guild in 1934? A. Yes, sir.

Q. Did she make \$49.75 and up? A. Well, the answer will be the same to all of them. That has nothing to do with that report. If you want to know, for example Hattie Carnegie, was designated by the code at a price of \$22.75 because that was the lowest price at which they regularly made goods. Jo Copeland, I am trusting to

memory, I believe they were designated as \$39.75 manufacturer for the same reason. But that again does not mean any of those manufacturers did not make goods below the designated price.

Q. Was Germaine Mounteill a member of the Guild in 1934? A. Yes.

Q. Under what classification did they come? A. I think we have the worksheets here. I will be glad to look up all these for you if you wish.

Q. Well, it is a matter of fact no manufacturer manufactured 49.75 garments and up? A. I know they manufactured \$49.75 and up garments, certainly. My recollection is they were designated as either \$39 or \$29.75.

13328

Q. Referring to Respondents' Exhibit No. 123 I note that under the heading "Total number of manufacturers in each price designation" there are listed nine in the \$49.75 and up group. Do you know the names of those nine? A. Yes.

Q. Will you give them to me, please, sir? A. You have those work sheets, haven't you; those code records and work sheets? (Addressing Mr. Keller)

Mr. Martin: I just want that one question, your Honor, to find out who those nine are.

A. The \$49.75 manufacturers are Madame Frances, Barbara Costume, Nettie Rosenstein, Gerald G. Freeman, Ranshaoff, Madame Francine, Nancy, Inc., Pinciarioente, Anna McCormick. Those are names appearing on our 127 for Identification.

13329

*By Mr. Martin.*

Q. Do you know how many manufacturers making \$16.75 and up who were available to the red carded stores at the time the A.M.C. was red carded were located out of New York? A. Well, I believe all of these nine, because you said \$16.75.

13330

*Albert M. Post--For Respondents--Cross.*

Q. No. Referring to those. Strike out that whole question. Going back to your testimony yesterday as to the 423 manufacturers making \$16.75 goods and up. A. Yes.

Q. Who were available to the A.M.C. stores. How many of them were located outside of the City of New York, do you recall? A. It is on the exhibit. I don't recall at the moment. If you show me the exhibit.

Q. It is not on any exhibit.

(Whereupon there was a discussion off the record.)

Mr. Martin: Strike out that question. I will ask another question.

13331

*By Mr. Martin.*

Q. I understood you to testify yesterday, Mr. Post, that at the time the A.M.C. stores were red carded there were 321 \$16.75 and up manufacturers in the City of New York and 183 outside of the City of New York? A. No, that was in 1935.

Q. The 504 total I understand then refers to 1935? A. That's right.

Q. And the correct number referring to the period at which the A.M.C. stores were red carded was 423, is that correct? A. No, that is not quite correct. There were 504 manufacturers who were available in 1935 making \$16.75 and up goods and then I went on to testify of those 121 were Guild members, which would reduce it roughly to 380 non-Guild manufacturers. Now, in 1936 which deals with the period you refer to at the time the A.M.C. stores were red carded there were a total of 423 manufacturers available none of whom were Guild members. There is a difference in the set up.

13332

Q. Now, I think I have that correct. Now, of that 423 non-Guild manufacturers available to the red carded store in 1936 how many of them were located outside of the City of New York? A. 160.

*Albert M. Post—For Respondent—Cross—Redirect.*

13333

Q. What investigation of those 160 did you make? A. Well, in cities where we had employees and organizations we shopped them. We investigated through the chambers of commerce, through buying offices and through retailers in various cities to whatever extent we were able to within the time we had to compile all this information.

Q. Did you make any investigation as to the type of garment, the fit, the quality of workmanship, the financial stability, the size and standing of those and their ability to turn out garments in quantity?

Mr. Albert: That is objected to as immaterial.

Examiner Diggs: I will overrule it and take the answer.

13334

A. Yes, I think we did.

Q. And the investigations that you made were as you testified in your previous answer? A. Yes.

Mr. Martin: I believe that is all I have, your Honor.

*Redirect examination by Mr. Albert.*

Q. Mr. Post, in answer to Mr. Martin's question with respect to the existence of manufacturers in the 49.75 price line you referred to Respondents' Exhibit No. 127 for Identification. Has that exhibit the names of all houses in the designated price lines as listed by the code? A. It has.

13335

Mr. Albert: I reoffer Respondents' Exhibit No. 127 for Identification.

Examiner Diggs: I sustain the same objection as I sustained before to the exhibit.

(Whereupon there was a discussion off the record.)

Mr. Albert: No further questions, Mr. Post.

13336

*Melvin A. Albert—For Respondents—Direct.*

Examiner Diggs: You may be excused, Mr. Witness.

Mr. Albert: I would like to be sworn, your Honor.

MELVIN A. ALBERT was called as a witness on behalf of the respondents and, having been duly sworn, testified as follows:

*Direct examination by Mr. Keller.*

13337

Q. Your full name is Melvin A. Albert? A. Yes.

Q. Mr. Albert, are you the attorney who has presented the case on behalf of the respondents in this proceeding and have you represented it in these hearings? A. Yes.

Q. Have you been present at all the hearings during which the respondents' case was presented? A. Yes.

Q. And during which the present Trial Examiner presided? A. Yes.

Q. Is the record as typewritten and presented by the official stenographers for the Federal Trade Commission a true and accurate record of the proceedings?

Mr. Martin: I object to that.

Examiner Diggs: Objection sustained.

Mr. Keller: Off the record, if you wish.

(Whereupon a discussion was had off the record.)

Examiner Diggs: You may have an exception.

Mr. Keller: Exception.

13338

*By Mr. Keller.*

Q. Now, Mr. Albert, during some of the days that the respondents presented its case, did you request the Municipal Stenographic Service of No. 2 Lafayette Street, New York, certified shorthand reporters, to be present?

Mr. Martin: Objected to.

Examiner Diggs: Objection sustained. You may have an exception to that.

By Mr. Keller.

Q. And did they at your request take a transcript of the proceedings which took place on those days?

Mr. Martin: Objected to.

Examiner Diggs: Sustained.

Mr. Martin: I object to all questions along this line.

Examiner Diggs: Objection sustained.

Mr. Keller: Off the record for a moment.

13340

(Whereupon there was a discussion off the record.)

Mr. Keller: Will you mark these, please?

(Whereupon the indicated documents were marked Respondents' Exhibits 204 to 208 for Identification.)

By Mr. Keller.

Q. Mr. Albert, I show you Respondents' Exhibits No. 204 to 208, inclusive, and ask you whether or not those represent a true and correct transcript of the testimony as taken by the Municipal Stenographic Service of 2 Lafayette Street, New York City, certified shorthand reporters?

13341

A. Yes.

Mr. Martin: I object to it.

Examiner Diggs: I sustain the objection and the answer will be stricken.

Mr. Keller: I offer Respondents' Exhibits Nos. 204 to 208 for Identification in evidence.

Mr. Martin: I object to their reception.

13342

*Melvin A. Albert—For Respondents—Direct.*

Examiner Diggs: Objection sustained and there will not be admitted. And I may add, in order to make the record complete, that the ruling would be the same if the reporter were present and undertook to testify that this was a correct transcript of his record.

(Whereupon a discussion was had off the record.)

*By Mr. Keller.*

13343

Q. Mr. Albert, did the present Examiner physically strike from the record certain questions put to witnesses on cross-examination of Commission's witnesses and on direct examination of respondents' witnesses?

Mr. Martin: Objection.

Examiner Diggs: Sustained.

*By Mr. Keller.*

Q. Did the present Examiner physically strike answers made by witnesses to questions put by you both on direct examination of respondents' witnesses and on cross-examination of Commission's witnesses?

Mr. Martin: Same objection.

Examiner Diggs: Sustained.

13344

*By Mr. Keller.*

Q. Did the present Examiner physically strike objections made by you to questions put by counsel for the Commission and to ruling made by the present Examiner?

Mr. Martin: Objection.

(Whereupon there was a discussion off the record.)

Examiner Diggs: I am sustaining the objection upon the broad ground that I will not permit counsel

sel. to ask any questions of this witness which tend or have for their purpose the impeachment of this record.

So far as this present question is concerned, the fact of the matter is that the Trial Examiner has afforded counsel an opportunity to make his objections but has properly refused to permit him to argue his objections on the record.

But my ruling goes to the extent that it is not proper to interrogate the witness concerning any matters which have for their purpose the impeachment of the record and I now advise counsel that is the ruling in order that he may understand in advance as to what the position is in this respect.

13346

(Whereupon there was a discussion off the record.)

Examiner Diggs: Because in the first place, as will be readily seen, take the last question asked, it would open up an issue in this case which would necessitate the taking of testimony to rebut the testimony given in respect thereto. And I do not think it is proper that such collateral issues should be raised.

Mr. Keller: I offer to make a proffer of proof on this question.

Examiner Diggs: I am going to deny you your proffer of proof without hearing it. I deny the proffer of proof without the proffer being made for the reason that if the ruling is correct it must follow that the proffer of proof would serve no useful purpose and if I am not correct then the whole matter is taken up for review anyway. Are there any further questions?

13347

Mr. Keller: No further questions.

Mr. Albert: If it please your Honor, I now move to dismiss the proceedings upon the ground that

13348

*Proceedings Before Examiner.*

the Federal Trade Commission has failed to prove a case against the respondents upon the law and upon the facts as previously made. And for the additional reason that the proceedings at the present time are void and of no effect by reason of the fact that the present Trial Examiner is the third Trial Examiner in the proceedings. That in so far as his report upon the proceedings is concerned with respect to the vast majority of the pages of the record the same will represent a ruling in the nature of an appellate ruling upon the proceedings in as much as the Examiner was not present at the time the testimony was given to observe the witnesses; to weigh their testimony as to its credibility in the light of his observation of them; and that his decision rests, and will rest primarily, upon a mere reading of the record.

13349

I also move to dismiss upon the ground that the constitutional right of the respondents to a fair trial has been violated in that the actions of the Federal Trade Commission have been arbitrary and unreasonable and that a fair, complete and true record of the proceedings and of the testimony given and the questions asked and answered has not been recorded for review by an appropriate tribunal.

13350

Examiner Diggs: The Trial Examiner has no authority to pass upon the motion and so the motion will stand to be disposed of by the Commission upon having its attention called to the same by counsel for the respondents. Do I understand you rest?

Mr. Albert: Respondents rest.

Examiner Diggs: Does the Government rest?

Mr. Martin: If your Honor please, I may have a little evidence which I wish to put in in rebuttal. I cannot determine that at this time.

Examiner Diggs: All right. Then this case will be adjourned and if it develops that there will be any further hearings they will be held upon five days notice to counsel for both sides.

(Whereupon at 4.30 P. M. the hearing in the above-entitled matter was adjourned as above indicated.)

UNITED STATES OF AMERICA

13352

BEFORE FEDERAL TRADE COMMISSION.

IN THE MATTER

OF

FASHION ORIGINATORS GUILD OF  
AMERICA, INC., et al.

Docket  
No. 2769.

ORDER CLOSING TAKING OF TESTIMONY.

The taking of testimony in the above-entitled proceeding closed as of this date. 13353

CHARLES F. DIGGS,  
Trial Examiner.

FD:EJS  
March 16, 1938.

13354

*Statement of Exhibits.***Commission's Exhibits 1-A to 1-T.**

Constitution and By-Laws of Fashion Originators Guild of America, Inc.

**Commission's Exhibits 2-A and 2-B.**

List of Members of Fashion Originators Guild of America, Inc.

**Commission's Exhibits 3-A, 3-B, 3-C, 3-D and 3-E.**

13355

Declarations of Co-operation in use in various forms.

**Commission's Exhibits 4-A to 4-F.**

Contract between the Minneapolis Fashion Guild and Fashion Originators Guild of America, Inc., dated as of August 26, 1935.

**Commission's Exhibits 5-A to 5-F.**

Contract between Michigan Avenue Guild of Chicago and Fashion Originators Guild of America, Inc., dated May 10, 1935.

13356

**Commission's Exhibits 6-A to 6-E.**

Contract between The Ladies' Ready to Wear Guild of Baltimore and Fashion Originators Guild of America, Inc., dated September 30, 1935.

**Commission's Exhibits 7-A to 7-E.**

Copy of speech made by Maurice Rentner to National Retail Dry Goods Association Convention on January 16, 1934.

*Statement of Exhibits.*

13357

**Commission's Exhibit 8.**

Minutes of Fashion Originators Guild of America, Inc.  
Membership Meeting of June 20, 1932, held at Fashion  
Originators Guild of America, Inc.

**Commission's Exhibit 9.**

Minutes of Fashion Originators Guild of America, Inc.  
Membership Meeting of July 6, 1932, held at the Garment  
Center Capital Club.

**Commission's Exhibits 10-A to 10-C.**

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Minutes of Fashion Originators Guild of America, Inc.  
Membership Meeting of October 31, 1932, held at the  
Waldorf-Astoria Hotel.

**Commission's Exhibits 11-A to 11-B.**

Minutes of Fashion Originators Guild of America, Inc.  
Membership Meeting of November 14, 1932, held at the  
Waldorf-Astoria Hotel.

**Commission's Exhibits 12-A to 12-B.**

Minutes of Fashion Originators Guild of America, Inc.  
Membership Meeting of November 28, 1932, held at the  
Waldorf-Astoria Hotel.

13359

**Commission's Exhibits 13-A to 13-D.**

Minutes of Membership Meeting of Fashion Originators  
Guild of America, Inc., of January 26, 1933, held at the  
Waldorf-Astoria Hotel.

13360

*Statement of Exhibits.***Commission's Exhibits 14-A to 14-B.**

Minutes of Fashion Originators Guild of America, Inc.  
Membership Meeting of February 17, 1933, held at the  
Waldorf-Astoria Hotel.

**Commission's Exhibit 15.**

Minutes of Fashion Originators Guild of America, Inc.  
Membership Meeting of February 23, 1933, held at the  
Waldorf-Astoria Hotel.

13361

**Commission's Exhibit 16.**

Minutes of Fashion Originators Guild of America, Inc.  
Membership Meeting of April 8, 1933, held at Fashion  
Originators Guild of America, Inc.

**Commission's Exhibit 17.**

Minutes of Fashion Originators Guild of America, Inc.  
Membership Meeting of April 22, 1933, held at Fashion  
Originators Guild of America, Inc.

**Commission's Exhibit 18.**

13362 Minutes of Fashion Originators Guild of America, Inc.  
Membership Meeting of May 5, 1933, held at the St. Regis  
Hotel.

**Commission's Exhibits 19-A and 19-B.**

Minutes of Fashion Originators Guild of America, Inc.  
Membership Meeting of June 12, 1933, held at the Wal-  
dorf-Astoria Hotel.

*Statement of Exhibits.*

13363

**Commission's Exhibit 20.**

Minutes of Fashion Originators Guild of America, Inc.  
Membership Meeting of June 28, 1933, held at the Waldorf-Astoria Hotel.

**Commission's Exhibits 21-A and 21-B.**

Minutes of Fashion Originators Guild of America, Inc.  
Membership Meeting of July 31, 1933, held at Fashion Originators Guild of America, Inc.

**Commission's Exhibit 22.**

13364

Minutes of Fashion Originators Guild of America, Inc.  
Membership Meeting of September 4, 1933, held at Garment Center Capital Club.

**Commission's Exhibit 23.**

Minutes of Fashion Originators Guild of America, Inc.  
Membership Meeting of October 25, 1933, held at Fashion Originators Guild of America, Inc.

**Commission's Exhibits 24-A and 24-B.**

Minutes of Fashion Originators Guild of America, Inc.  
Membership Meeting of November 6, 1933, held at Fashion Originators Guild of America, Inc. 13365

**Commission's Exhibit 25.**

Minutes of Fashion Originators Guild of America, Inc.  
Membership Meeting of December 1, 1933, held at Fashion Originators Guild of America, Inc.

13366

*Statement of Exhibits.***Commission's Exhibits 26-A and 26-B.**

Minutes of Fashion Originators Guild of America, Inc.  
Membership Meeting of December 28, 1933, held at Fashion Originators Guild of America, Inc.

**Commission's Exhibit 27.**

Minutes of Fashion Originators Guild of America, Inc.  
Membership Meeting of April 3, 1934, held at Fashion Originators Guild of America, Inc.

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**Commission's Exhibit 28.**

Minutes of Fashion Originators Guild of America, Inc.  
Membership Meeting of May 23, 1934, held at Adam Gimbel's office.

**Commission's Exhibit 29.**

Minutes of Fashion Originators Guild of America, Inc.  
Membership Meeting of December 16, 1934, held at Fashion Originators Guild of America, Inc.

**Commission's Exhibit 30.**

13368

Minutes of Fashion Originators Guild of America, Inc.  
Membership Meeting of January 2, 1935, held at the Hotel New Yorker.

**Commission's Exhibits 31-A and 31-B.**

Minutes of Fashion Originators Guild of America, Inc.  
Membership Meeting of May 2, 1935, held at Specialty Stores Association.

**Commission's Exhibit 32.**

Minutes of Fashion Originators Guild of America, Inc.  
Membership Meeting of May 4, 1935, held at Specialty  
Stores Association.

**Commission's Exhibit 33.**

Minutes of Fashion Originators Guild of America, Inc.  
Membership Meeting of June 10, 1935, held at the Wal-  
dorf-Astoria Hotel.

**Commission's Exhibits 34-A to 34-C.**

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Minutes of Fashion Originators Guild of America, Inc.  
Membership Meeting of June 21, 1935, held at the Hotel  
New Yorker.

**Commission's Exhibits 35-A and 35-B.**

Minutes of Fashion Originators Guild of America, Inc.  
Membership Meeting of June 29, 1932, held at Garment  
Center Capital Club.

**Commission's Exhibit 36.**

Minutes of Fashion Originators Guild of America, Inc.  
Membership Meeting of December 3, 1935, held at the 13371  
Waldorf-Astoria Hotel.

**Commission's Exhibits 37-A and 37-B.**

Minutes of Fashion Originators Guild of America, Inc.  
Membership Meeting of December 3, 1935, held at Fash-  
ion Originators Guild of America, Inc.

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*Statement of Exhibits.***Commission's Exhibits 38-A to 38-D.**

Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of February 17, 1936, held at the Waldorf-Astoria Hotel.

**Commission's Exhibit 39.**

Minutes of Fashion Originators Guild of America, Inc. Membership Meeting of February 19, 1936, held at Fashion Originators Guild of America, Inc.

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**Commission's Exhibit 40.**

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of March 3, 1932, held at Fashion Originators Guild of America, Inc.

**Commission's Exhibits 41-A and 41-B.**

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of May 17, 1933, held at the Garment Center Capital Club.

**Commission's Exhibit 42.**

13374 Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of June 16, 1933, held at Fashion Originators Guild of America, Inc.

**Commission's Exhibit 43.**

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of June 15, 1933, held at Garment Center Capital Club.

*Statement of Exhibits.*

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**Commission's Exhibit 44.**

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of August 4, 1933, held at the Garment Center Capital Club.

**Commission's Exhibits 45-A and 45-B.**

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of September 13, 1933, held at the Garment Center Capital Club.

**Commission's Exhibit 46.**

13376

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of September 18, 1933, held at the Garment Center Capital Club.

**Commission's Exhibit 47.**

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of October 11, 1933, held at the Garment Center Capital Club.

**Commission's Exhibit 48.**

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of October 17, 1933, held at the Garment Center Capital Club.

13377

**Commission's Exhibit 49.**

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of November 4, 1933, held at Fashion Originators Guild of America, Inc.

13378

*Statement of Exhibits.***Commission's Exhibit 50.**

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of January 31, 1934, held at Fashion Originators Guild of America, Inc.

**Commission's Exhibits 51-A and 51-B.**

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of February 22, 1934, held at Fashion Originators Guild of America, Inc.

13379

**Commission's Exhibit 52.**

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of April 11, 1934, held at Fashion Originators Guild of America, Inc.

**Commission's Exhibit 53.**

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of April 18, 1934, held at Fashion Originators Guild of America, Inc.

**Commission's Exhibit 54.**

13380 Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of May 3, 1934, held at Fashion Originators Guild of America, Inc.

**Commission's Exhibit 55.**

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of May 21, 1934, held at Fashion Originators Guild of America, Inc.

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**Commission's Exhibit 56.**

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of June 13, 1934, held at Fashion Originators Guild of America, Inc.

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**Commission's Exhibits 57-A to 57-C.**

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of August 28, 1934, held at Fashion Originators Guild of America, Inc.

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**Commission's Exhibit 58.**

13382

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of September 17, 1934, held at Fashion Originators Guild of America, Inc.

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**Commission's Exhibit 59.**

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of November 22, 1934, held at the Hotel New Yorker.

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**Commission's Exhibits 60-A to 60-C.**

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., on January 24, 1935, held at the Hotel New Yorker.

13383

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**Commission's Exhibit 61.**

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of March 20, 1935, held at the Hotel Ritz-Carlton.

13384

*Statement of Exhibits.***Commission's Exhibit 62.**

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of April 8, 1935, held at the Hotel Ritz-Carlton.

**Commission's Exhibits 63-A and 63-B.**

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of April 30, 1935, held at the Hotel New Yorker.

13385

**Commission's Exhibits 64-A and 64-B.**

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of June 4, 1935, held at the Hotel New Yorker.

**Commission's Exhibits 65-A to 65-C.**

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of September 16, 1935, held at the Hotel Waldorf-Astoria.

**Commission's Exhibits 66-A and 66-B.**

13386

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of October 21, 1935, held at the Hotel Waldorf-Astoria.

**Commission's Exhibits 67-A and 67-B.**

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of December 3, 1935, held at the Hotel Waldorf-Astoria.

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**Commission's Exhibits 68-A to 68-C.**

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of February 13, 1936, held at Fashion Originators Guild of America, Inc.

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**Commission's Exhibits 69-A and 69-B.**

Minutes of Meeting of Board of Governors of Fashion Originators Guild of America, Inc., of February 18, 1936, held at Fashion Originators Guild of America, Inc.

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**Commission's Exhibit 70.**

13388

Minutes of a Meeting of the Executive Committee on Piracy, held on August 16, 1933, at Fashion Originators Guild of America, Inc.

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**Commission's Exhibit 71.**

Minutes of Meeting of Grievance Committee of July 27, 1934, held at Fashion Originators Guild of America, Inc.

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**Commission's Exhibit 72.**

Minutes of Meeting of Grievance Committee of September 7, 1934, held at Fashion Originators Guild of America, Inc.

13389

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**Commission's Exhibit 73.**

Minutes of Meeting of Grievance Committee of September 24, 1934, held at Fashion Originators Guild of America, Inc.

13390

*Statement of Exhibits.***Commission's Exhibit 74.**

Minutes of Meeting of Grievance Committee of December 20, 1934, held at Fashion Originators Guild of America, Inc.

**Commission's Exhibit 75.**

Minutes of Meeting of Grievance Committee of January 7, 1935, held at Fashion Originators Guild of America, Inc.

13391

**Commission's Exhibit 76.**

Report of Grievance Committee of January 12, 1935, given over the telephone.

**Commission's Exhibit 77.**

Minutes of Meeting of Grievance Committee, held on January 23, 1935, at Fashion Originators Guild of America, Inc.

**Commission's Exhibit 78.**

Minutes of Meeting of Grievance Committee of January 28, 1935, held at Fashion Originators Guild of America, Inc.

13392

**Commission's Exhibit 79.**

Minutes of Meeting of Grievance Committee of March 21, 1935, held at Fashion Originators Guild of America, Inc.

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**Commission's Exhibits 80-A and 80-B.**

Minutes of Meeting of Grievance Committee of March 29, 1935, held at Fashion Originators Guild of America, Inc.

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**Commission's Exhibits 81-A to 81-C.**

Minutes of Meeting of Grievance Committee of June 20, 1935, held at Fashion Originators Guild of America, Inc.

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**Commission's Exhibits 82-A and 82-B.**

13394

Minutes of Meeting of Grievance Committee of July 31, 1935, held at Fashion Originators Guild of America, Inc.

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**Commission's Exhibits 83-A and 83-B.**

Minutes of Meeting of Grievance Committee of September 25, 1935, held at Fashion Originators Guild of America, Inc.

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**Commission's Exhibit 84.**

Minutes of Meeting of Grievance Committee of October 29, 1935, held at Fashion Originators Guild of America, Inc.

13395

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**Commission's Exhibits 85-A and 85-B.**

Minutes of Meeting of Grievance Committee of December 20, 1935, held at Fashion Originators Guild of America, Inc.

13396

*Statement of Exhibits.***Commission's Exhibit 86.**

Minutes of Meeting of Grievance Committee of January 2, 1936, held at Fashion Originators Guild of America, Inc.

**Commission's Exhibits 87-A and 87-B.**

Minutes of Meeting of Grievance Committee of January 27, 1936, held at Fashion Originators Guild of America, Inc.

13397

**Commission's Exhibit 88.**

List of Non-Guild Manufacturers.

**Commission's Exhibits 89-A to 89-C.**

List of Red Carded Retailers as of July 6, 1936.

**Commission's Exhibit 90-A.**

Procedure on Style Piracy adopted at Membership Meeting of December 3, 1935.

**Commission's Exhibit 90-B.**

13398

Minutes of Meeting of Executive Committee on Style Piracy of December 3, 1935.

**Commission's Exhibits 91-A to 91-C.**

List of Members and their price ranges as shown on applications as of April 16, 1936.

**Commission's Exhibit 92.**

Resident Office Declarations of Co-operation.

**Commission's Exhibits 93-A and 93-B.**

List of Resident Offices signed on regular and special  
Declarations of Co-operation as of April 16, 1935.

**Commission's Exhibits 94-A to 94-I.**

Recapitulation of Red Cards as of March 20, 1936.

**Commission's Exhibit 95.**

List of Officers and Directors of Fashion Originators  
Guild of America, Inc., as of April 16, 1936.

13400

**Commission's Exhibits 96-A to 96-F.**

Instructions to Shoppers.

**Commission's Exhibit 96-G.**

Declaration of Co-operation by Retail Store.

**Commission's Exhibits 97-A to 97-N.**

Correspondence and report on complaint that P & R  
Shop of Brooklyn is getting merchandise from L. & D.  
Bellinson, C. H. D. Robbins, Aywon, and B. Tobias.

13401

**Commission's Exhibits 98-A to 98-M.**

Transaction clearing through Guild office, November,  
1935, Sutton-Donen, Jack Sutton Dress Shop, Charles F.  
Donen.

**Commission's Exhibits 99-A and 99-B.**

Circular letter of June 16, 1933, and memo. of Guild.

13402

*Statement of Exhibits.*

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**Commission's Exhibits 99-C and 99-D.**

Resolution and its significance.

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**Commission's Exhibit 99-E.**

Form of Declaration of Co-operation enclosed in Exhibits 99-A and 99-B.

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**Commission's Exhibits 100-A and 100-B.**

13403

Letters re evasion, circular letter of April 9, 1936.

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**Commission's Exhibits 101-A and 101-B.**

Copy of agreement between Protective Affiliates and the Fashion Originators Guild of America, Inc.

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**Commission's Exhibits 102-A to 102-X.**

Monthly reports on returns, November, 1935, December 1935, and January, 1936.

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13404

**Commission's Exhibit 103.**

Letter of C. F. Roycroft to J. M. Golby, dated September 4, 1935.

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**Commission's Exhibits 104-A and 104-B.**

Letter of J. M. Golby to C. F. Roycroft, dated October 1935.

*Statement of Exhibits.*

13405

**Commission's Exhibit 105.**

Letter of Hochschild, Kohn & Co. to A. M. Post, dated October 1, 1935.

**Commission's Exhibit 106.**

Letter of Wolf, Cohn, Inc., to Fashion Originators Guild of America, Inc., dated October 1, 1935.

**Commission's Exhibit 107.**

Letter of Munroe-Michel, Inc., to Fashion Originators Guild of America, Inc., dated October 1, 1935.

13406

**Commission's Exhibit 108.**

Memorandum of A. M. Post to J. M. Golby, dated October 1, 1935.

**Commission's Exhibit 109.**

Memorandum by A. M. Post re telephone conversation with Mr. Engel of Jane Engel and Chez Rosette, dated October 1, 1935.

**Commission's Exhibits 110-A and 110-B.**

Letter of A. M. Post to C. F. Roycroft, dated October 1, 1935.

13407

**Commission's Exhibit 111.**

Telegram of Dolly Winants of Mary McLean, Inc., to Fashion Originators Guild of America, dated October 1, 1935.

13408

*Statement of Exhibits.*

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**Commission's Exhibit 112.**

Telegram from The Clothes Line to Fashion Originators Guild of America, Inc., dated October 1, 1935.

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**Commission's Exhibit 113.**

Telegram from C. F. Roycroft of The Ladies' Ready Wear Guild of Baltimore to A. M. Post, dated October 1935, re Jane Engel and Chez Rozette.

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**Commission's Exhibit 114.**

13409

Letter from C. F. Roycroft to A. M. Post, dated October 2, 1935, re Jane Engel and Chez Rosette.

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**Commission's Exhibit 115.**

Reply to Commission's Exhibit 114 by A. M. Post to C. F. Roycroft of The Ladies' Ready to Wear Guild of Baltimore, dated October 4, 1935.

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**Commission's Exhibit 116.**

Letter of J. M. Golby to C. F. Roycroft, dated November 4, 1935.

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13410

**Commission's Exhibit 117.**

Letter of C. F. Roycroft to J. M. Golby of Fashion Originators Guild of America, Inc., dated December 1935.

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**Commission's Exhibit 118.**

Letter of J. M. Golby to C. F. Roycroft, dated December 24, 1935.

*Statement of Exhibits.*

13411

**Commission's Exhibit 119.**

Letter of J. M. Golby to C. F. Roycroft, dated October 21, 1935.

**Commission's Exhibit 120.**

Letter of J. M. Golby to C. F. Roycroft, dated January 14, 1935.

**Commission's Exhibit 121.**

Letter of J. M. Golby to Rose E. Phillips, dated January 14, 1935.

13412

**Commission's Exhibit 122.**

Signed Declaration of Co-operation of Rose E. Phillips, dated January 14, 1935.

**Commission's Exhibit 123.**

Letter of J. M. Golby to C. F. Roycroft on letterhead of Fashion Originators Guild of America, Inc., dated January 22, 1935.

**Commission's Exhibit 124.**

Letter of C. F. Roycroft to J. M. Golby on letterhead of The Ladies' Ready to Wear Guild of Baltimore, dated February 1, 1935.

13413

**Commission's Exhibit 125.**

Letter of J. M. Golby to C. F. Roycroft on letterhead of Fashion Originators Guild of America, Inc., dated February 1, 1935.

13414

*Statement of Exhibits.*

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**Commission's Exhibit 126.**

Letter of C. F. Roycroft to J. M. Golby on letterhead of The Ladies' Ready to Wear Guild of Baltimore, dated February 6, 1935.

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**Commission's Exhibit 127.**

Letter of J. M. Golby to Rose E. Phillips on letterhead of Fashion Originators Guild of America, Inc., dated March 12, 1935.

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13415

**Commission's Exhibit 128.**

Letter of J. M. Golby to Lee's, Inc., on letterhead of Fashion Originators Guild of America, Inc., dated March 11, 1935.

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**Commission's Exhibit 129.**

Letter of J. M. Golby to Sloan-Strobel on letterhead of Fashion Originators Guild of America, Inc., dated March 11, 1935.

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**Commission's Exhibit 130.**

13416 Letter of J. M. Golby to C. F. Roycroft on letterhead of Fashion Originators Guild of America, Inc., dated March 11, 1935.

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**Commission's Exhibit 131.**

Letter of J. M. Golby to C. F. Roycroft on letterhead of Fashion Originators Guild of America, Inc., dated March 27, 1935.

*Statement of Exhibits.*

13417

**Commission's Exhibit 132.**

Letter of C. F. Roycroft to J. M. Golby on letterhead of The Ladies' Ready to Wear Guild of Baltimore, dated March 28, 1935.

**Commission's Exhibit 133.**

Letter of J. M. Golby to C. F. Roycroft on letterhead of Fashion Originators Guild of America, Inc., dated March 29, 1935.

**Commission's Exhibit 134.**

13418

Letter of J. M. Golby to C. F. Roycroft on letterhead of Fashion Originators Guild of America, Inc., dated April 5, 1935.

**Commission's Exhibit 135.**

Letter of C. F. Roycroft to J. M. Golby on letterhead of The Ladies' Ready to Wear Guild of Baltimore, dated April 13, 1935.

**Commission's Exhibit 136.**

Letter of C. F. Roycroft to J. M. Golby on letterhead of The Ladies' Ready to Wear Guild of Baltimore, dated April 30, 1935.

13419

**Commission's Exhibit 137.**

Letter of J. M. Golby to C. F. Roycroft on letterhead of Fashion Originators Guild of America, Inc., dated May 1, 1935.

13420

*Statement of Exhibits.*

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**Commission's Exhibit 138.**

Letter of C. F. Roycroft to J. M. Golby on letterhead of The Ladies' Ready to Wear Guild of Baltimore, dated May 3, 1935.

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**Commission's Exhibit 139.**

Letter of C. F. Roycroft to J. M. Golby on letterhead of The Ladies' Ready to Wear Guild of Baltimore, dated July 5, 1935.

13421

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**Commission's Exhibit 140.**

Letter of J. M. Golby to C. F. Roycroft on letterhead of Fashion Originators Guild of America, Inc., dated July 8, 1935.

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**Commission's Exhibits 141-A to 141-C.**

Letter of A. M. Post to Allan Metzger of the Maison Annette on letterhead of Fashion Originators Guild of America, Inc., dated August 1, 1935.

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**Commission's Exhibit 142.**

Letter of C. F. Roycroft to J. Goldston on letterhead of The Ladies' Ready to Wear Guild of Baltimore, dated May 22, 1935.

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**Commission's Exhibit 143.**

Letter of J. M. Golby to C. F. Roycroft on letterhead of Fashion Originators Guild of America, Inc., dated August 23, 1935.

**Commission's Exhibit 144.**

Letter of J. M. Golby to C. F. Roycroft on letterhead of Fashion Originators Guild of America, Inc., dated August 27, 1935.

**Commission's Exhibit 145.**

Letter of C. F. Roycroft to J. M. Golby on letterhead of The Ladies' Ready to Wear Guild of Baltimore, dated August 28, 1935.

**Commission's Exhibit 146.**

13424

Letter of C. F. Roycroft to J. M. Golby on letterhead of The Ladies' Ready to Wear Guild of Baltimore, dated August 27, 1935.

**Commission's Exhibit 147.**

Letter of J. M. Golby to C. F. Roycroft on letterhead of Fashion Originators Guild of America, Inc., dated August 28, 1935.

**Commission's Exhibit 148.**

Letter of C. F. Roycroft to J. M. Golby on letterhead of The Ladies' Ready to Wear Guild of Baltimore, dated August 29, 1935.

13425

**Commission's Exhibit 149.**

Letter of C. F. Roycroft to J. M. Golby on letterhead of The Ladies' Ready to Wear Guild of Baltimore, dated October 25, 1935.

13426

*Statement of Exhibits.*

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**Commission's Exhibit 150.**

Letter of J. M. Golby to C. F. Roycroft on letterhead of Fashion Originators Guild of America, Inc., dated October 29, 1935.

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**Commission's Exhibit 151.**

Letter of C. F. Roycroft to J. M. Golby on letterhead of The Ladies' Ready to Wear Guild of Baltimore, dated October 30, 1935.

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13427

**Commission's Exhibit 154.**

Letter of C. F. Roycroft to J. M. Golby on letterhead of The Ladies' Ready to Wear Guild of Baltimore, dated November 5, 1935.

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**Commission's Exhibit 155.**

Letter of J. M. Golby to C. F. Roycroft on letterhead of Fashion Originators Guild of America, Inc., dated November 6, 1935.

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13428

**Commission's Exhibit 156.**

Letter of C. F. Roycroft to J. M. Golby on letterhead of The Ladies' Ready to Wear Guild of Baltimore, dated November 9, 1935.

4477

*Statement of Exhibits.*

13429

**Commission's Exhibit 157.**

Letter of J. M. Golby to C. F. Roycroft on letterhead of Fashion Originators Guild of America, Inc., dated November 11, 1935.

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**Commission's Exhibit 158.**

Letter of C. F. Roycroft to J. M. Golby on letterhead of the Ladies' Ready to Wear Guild of Baltimore, dated November 25, 1935.

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13430

**Commission's Exhibit 159.**

Letter of J. M. Golby to Weinstein & Co. on letterhead of Fashion Originators Guild of America, Inc., dated November 27, 1935.

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**Commission's Exhibit 160.**

Letter of J. M. Golby to Bertram S. Rice on letterhead of Fashion Originators Guild of America, Inc., dated November 27, 1935.

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**Commission's Exhibit 161.**

13431

Letter of J. M. Golby to C. F. Roycroft on letterhead of Fashion Originators Guild of America, Inc., dated December 10, 1935.

13432

*Statement of Exhibits.*

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**Commission's Exhibit 164.**

Letter of J. M. Golby to C. F. Roycroft on letterhead of Fashion Originators Guild of America, Inc., dated December 24, 1935.

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**Commission's Exhibit 165.**

Letter of J. M. Golby to C. F. Roycroft on letterhead of Fashion Originators Guild of America, Inc., dated January 27, 1936.

13433

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**Commission's Exhibit 166.**

Letter of C. F. Roycroft to J. M. Golby on letterhead of The Ladies' Ready to Wear Guild of Baltimore, dated January 29, 1936.

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**Commission's Exhibit 167.**

Telegram from A. M. Post to Roy H. Bjorkman, Inc., dated June 26, 1935.

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**Commission's Exhibit 168.**

Letter from Roy H. Bjorkman to J. M. Golby on letterhead of Roy H. Bjorkman, Inc., dated June 27, 1935.

13434

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**Commission's Exhibit 169.**

Day Letter Telegram from A. M. Post to Roy H. Bjorkman, dated June 27, 1935.

*Statement of Exhibits.*

13435

**Commission's Exhibit 170.**

Day Letter Telegram from A. M. Post to Roy H. Bjorkman, dated June 28, 1935.

**Commission's Exhibit 171.**

Letter from Roy H. Bjorkman to A. M. Post on letterhead of Roy H. Bjorkman, Inc., dated June 28, 1935.

**Commission's Exhibits 172-A and 172-B.**

13436

Letter from Roy H. Bjorkman to A. M. Post on letterhead of Roy H. Bjorkman, Inc., dated August 19, 1935.

**Commission's Exhibits 173-A to 173-D.**

Letter of A. M. Post to Roy H. Bjorkman on letterhead of Fashion Originators Guild of America, Inc., dated August 21, 1935.

**Commission's Exhibit 174.**

Letter of A. M. Post to Roy H. Bjorkman on letterhead of Fashion Originators Guild of America, Inc., dated September 12, 1935.

13437

**Commission's Exhibit 175.**

Letter of J. M. Golby to Roy H. Bjorkman, c/o Minneapolis Guild, on letterhead of Fashion Originators Guild of America, Inc., dated October 21, 1935.

13438

*Statement of Exhibits.*

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**Commission's Exhibit 176.**

Letter of R. H. Bjorkman to A. M. Post on letterhead of Roy H. Bjorkman, Inc., dated October 29, 1935.

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**Commission's Exhibit 177.**

Letter of J. M. Golby to R. Bjorkman on letterhead of Fashion Originators Guild of America, Inc., dated October 31, 1935.

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**Commission's Exhibit 178.**

13439

Letter of J. M. Golby to Ed. A. Fletcher, c/o Michigan Avenue Guild, on letterhead of Fashion Originators Guild of America, Inc., dated April 15, 1935.

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**Commission's Exhibit 179.**

Letter of Herbert & Cooper, Inc., to George Gleason, c/o Saks Fifth Avenue, Chicago, Illinois, re Clare Weinberger; on letterhead of Herbert & Cooper, Inc., dated April 17, 1935.

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**Commission's Exhibit 180.**

13440

Telegram from Myron Herbert to Clare Weinberger, c/o Gert Anne Shop, dated April 2, 1935.

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**Commission's Exhibit 181.**

Letter from Ed. Fletcher to J. M. Golby on letterhead of Michigan Avenue Guild, dated May 1, 1935.

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**Commission's Exhibit 182.**

Letter of Ed. Fletcher to Mrs. Emma R. Beatie on letterhead of Michigan Avenue Guild, dated April 5, 1935.

**Commission's Exhibit 183.**

Letter of Mrs. Emma Beatie to Ed. Fletcher on letterhead of Emma Beatie, Inc., dated April 3, 1935.

**Commission's Exhibit 184.**

Letter of J. M. Golby to Ed. Fletcher re Dore Modes on letterhead of Fashion Originators Guild of America, Inc., dated August 15, 1935.

**Commission's Exhibit 185.**

Letter of Ed. Fletcher to J. M. Golby re Dore Modes on letterhead of Michigan Avenue Guild, dated July 23, 1935.

13442

**Commission's Exhibit 186.**

Letter of J. M. Golby to Ed. Fletcher re Dore Modes on letterhead of Fashion Originators Guild of America, Inc., dated July 19, 1935.

**Commission's Exhibit 187.**

Letter of J. M. Golby to Ed. Fletcher re Dore Modes on letterhead of Fashion Originators Guild of America, Inc., dated July 17, 1935.

13443

**Commission's Exhibit 188.**

Letter of Ed Fletcher to J. M. Golby re Dore Modes on letterhead of Michigan Avenue Guild, dated July 16, 1935.

13444

*Statement of Exhibits.***Commission's Exhibit 189.**

Letter of J. M. Golby to Ed. Fletcher re Mrs. J. Rosenberg on letterhead of Fashion Originators Guild of America, Inc., dated August 19, 1935.

**Commission's Exhibit 190.**

Letter of Ed. Fletcher to J. M. Golby re Rosenberg v. Viola Cohn on letterhead of Michigan Avenue Guild, dated August 15, 1935.

13445

**Commission's Exhibit 191.**

Letter of Ed. Fletcher to J. M. Golby re Jan Cotton on letterhead of Michigan Avenue Guild, dated October 19, 1935.

**Commission's Exhibit 192.**

Letter of Ed. Fletcher to J. M. Golby on letterhead of Michigan Avenue Guild, dated May 20, 1935.

**Commission's Exhibit 193.**

13446

Letter of Ed. Fletcher to Clare Weinberger, c/o Clare Anne Shop, on letterhead of Michigan Avenue Guild, dated May 8, 1935.

**Commission's Exhibit 194.**

Letter of Clare Weinberger to Ed. Fletcher on letterhead of Clare Anne Shoppe, dated May 4, 1935.

**Commission's Exhibit 195.**

Telegram from George M. Gleason to J. M. Golby, dated May 2, 1935.

**Commission's Exhibit 196.**

Letter of Ed. Fletcher to Clare Weinberger on letterhead of Michigan Avenue Guild, dated May 2, 1935.

**Commission's Exhibit 197.**

Resignation of Clare Anne Shop from Michigan Avenue Guild on billhead of Michigan Avenue Guild, dated May 1, 1935.

**Commission's Exhibit 198.**

Letter of Ed. Fletcher to J. M. Golby re Bessie Barnett on letterhead of Michigan Avenue Guild, dated November 11, 1935. 13448

**Commission's Exhibit 199.**

Letter of J. M. Golby to Ed. Fletcher re Barnett on letterhead of Fashion Originators Guild of America, Inc., dated November 8, 1935.

**Commission's Exhibit 200.**

Letter of Ed. Fletcher to Mr. J. M. Fahey, Manager, The Embassy, re Bessie Barnett, on letterhead of Michigan Avenue Guild, dated November 2, 1935. 13449

**Commission's Exhibit 201.**

Letter of The Embassy to Ed. Fletcher re Barnett on letterhead of The Embassy, dated November 1, 1935.

**Commission's Exhibit 202.**

Letter of Ed. Fletcher to J. M. Golby on letterhead of Michigan Avenue Guild, dated October 15, 1935.

13450

*Statement of Exhibits.*

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**Commission's Exhibit 203.**

Letter of J. M. Golby to Ed. Fletcher re Bessie Barnett on letterhead of Fashion Originators Guild of America, Inc., dated October 11, 1935.

**Commission's Exhibit 204.**

Letter of Harriet Stein Studio to Ed. Fletcher on letterhead of Hotel Belmont, dated January 14, 1935.

**Commission's Exhibit 205.**

13451

Letter of Ed. Fletcher to J. M. Golby re Stein on letterhead of Michigan Avenue Guild, dated January 4, 1935.

**Commission's Exhibit 206.**

Letter of Ed. Fletcher to Miss Harriet Stein on letterhead of Michigan Avenue Guild, dated January 3, 1935.

**Commission's Exhibit 207.**

Letter of Ed. Fletcher to Miss Harriet Stein on letterhead of Michigan Avenue Guild, dated December 31, 1934.

**Commission's Exhibit 208.**

13452

Letter of Ed. Fletcher to J. M. Golby re Arthur Weiss on letterhead of Michigan Avenue Guild, dated January 17, 1935.

**Commission's Exhibit 209.**

Letter of J. M. Golby to Ed. Fletcher re Arthur Weiss on letterhead of Fashion Originators Guild of America, Inc., dated January 11, 1935.

*Statement of Exhibits.*

13453

**Commission's Exhibit 210.**

First page of letter of J. M. Golby to George Gleason, President of Michigan Avenue Guild, re Fred A. Block, on letterhead of Fashion Originators Guild of America, Inc., dated May 21, 1935.

**Commission's Exhibit 211.**

Second page of Commission's Exhibit 210.

**Commission's Exhibit 212.**

Letter of J. M. Golby to Ed. Fletcher re Block on letterhead of Fashion Originators Guild of America, Inc., dated January 11, 1935. 13454

**Commission's Exhibit 213.**

Letter of Fred A. Block to J. M. Golby on letterhead of Fred A. Block, dated January 9, 1935.

**Commission's Exhibit 214.**

Letter of J. M. Golby to Ed. Fletcher re Block on letterhead of Fashion Originators Guild of America, Inc., dated January 7, 1935.

**Commission's Exhibit 215.**

13455

Letter of Ed. Fletcher of Michigan Avenue Guild to J. M. Golby re Fred A. Block on letterhead of Michigan Avenue Guild, dated January 4, 1935.

**Commission's Exhibit 216.**

Letter of Ed. Fletcher to Fred A. Block on letterhead of Michigan Avenue Guild, dated December 31, 1934.

13456

*Statement of Exhibits.***Commission's Exhibit 217.**

Letter of J. M. Golby to Ed. Fletcher re Fred A. Block on letterhead of Fashion Originators Guild of America, Inc., dated November 14, 1934.

**Commission's Exhibit 218.**

Letter of Ed. Fletcher to J. M. Golby re Fred A. Block on letterhead of Michigan Avenue Guild, dated November 12, 1934.

13457

**Commission's Exhibit 219.**

Letter of J. M. Golby to Ed. Fletcher re Block on letterhead of Fashion Originators Guild of America, Inc., dated October 4, 1935.

**Commission's Exhibit 220.**

Letter of J. M. Golby to Miss Helen Kindler re Fred A. Block on letterhead of Fashion Originators Guild of America, Inc., dated October 4, 1935.

**Commission's Exhibit 221.**

Letter of Ed. Fletcher to J. M. Golby re Fred A. Block on letterhead of Michigan Avenue Guild, dated October 1, 1935.

**Commission's Exhibit 222.**

Copy of Letter of Miss Kindler to J. M. Golby re Fred A. Block, dated October 2, 1935.

*Statement of Exhibits.*

13459

**Commission's Exhibit 223.**

Letter of Secretary of Michigan Avenue Guild to George Gleason re Heffernan, dated April 22, 1935.

**Commission's Exhibit 224.**

Letter of Ed. Fletcher to J. M. Golby on letterhead of Michigan Avenue Guild, dated January 4, 1935.

**Commission's Exhibit 225.**

Application of Mrs. Frances Malsh to Michigan Avenue Guild, dated December 21, 1934.

13460

**Commission's Exhibit 226.**

Reply Letter of Michigan Avenue Guild by Ed. Fletcher to Mrs. Frances Malsh, dated January 24, 1935.

**Commission's Exhibit 227.**

Letter of Ed. Fletcher of Michigan Avenue Guild to J. M. Golby on letterhead of Michigan Avenue Guild, dated December 21, 1934.

**Commission's Exhibit 228.**

Letter of J. M. Golby to Ed. Fletcher on letterhead of Fashion Originators Guild of America, Inc., dated December 18, 1934.

13461

**Commission's Exhibit 229.**

Letter of J. M. Golby to Ed. Fletcher re Malsh on letterhead of Fashion Originators Guild of America, Inc., dated August 23, 1934.

13462

*Statement of Exhibits***Commission's Exhibit 230.**

Letter of Ed. Fletcher to J. M. Golby re Malsh on letterhead of Michigan Avenue Guild, dated August 22, 1934.

**Commission's Exhibit 231.**

Letter of J. M. Golby to Ed. Fletcher on letterhead of Fashion Originators Guild of America, Inc., dated January 8, 1935.

**Commission's Exhibit 232.**

13463

Letter of Ed. Fletcher to J. M. Golby on letterhead of Michigan Avenue Guild, dated January 4, 1935.

**Commission's Exhibit 233.**

Application for Membership of Emily Naser to Michigan Avenue Guild, dated December 8, 1934, signed by both Emily Naser and Jack Naser.

**Commission's Exhibit 234.**

Letter of J. M. Golby to Ed. Fletcher on letterhead of Fashion Originators Guild of America, Inc., dated November 10, 1934.

13461

**Commission's Exhibit 235.**

Letter of Ed. Fletcher to John T. Shayne & Co., dated June 17, 1935.

**Commission's Exhibit 236.**

Letter of A. H. Marshall to A. M. Post on letterhead of Marshall & Marshall, dated June 13, 1935.

*Statement of Exhibits.*

13465

**Commission's Exhibit 237.**

Letter of A. M. Post to T. J. Considine in care of John T. Shayne & Co., undated.

**Commission's Exhibit 238.**

Letter of A. M. Post to Ed. Fletcher re John T. Shayne & Co. on letterhead of Fashion Originators Guild of America, Inc., dated May 21, 1935.

**Commission's Exhibit 239.**

13466

Letter of Ed. Fletcher to A. M. Post re John T. Shayne & Co., dated May 14, 1935.

**Commission's Exhibit 241.**

Letter of J. M. Golby to T. J. Considine in care of John T. Shayne & Co., dated January 11, 1935.

**Commission's Exhibit 242.**

Letter of J. M. Golby to George M. Gleason of Michigan Avenue Guild on letterhead of Fashion Originators Guild of America, Inc., dated January 11, 1935.

13467

**Commission's Exhibits 243-A to 243-J.**

Compilation of Resolutions embodying regulations binding upon members of Textile Division of Fashion Originators Guild of America, Inc.

13468

*Statement of Exhibits.*

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**Commission's Exhibit 245.**

Letter of A. M. DeLisser of Textile Division of Fashion Originators Guild of America, Inc., to Mr. Grossleight dated January 27, 1936.

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**Commission's Exhibit 246-A.**

Minutes of Regular Meeting of June 16, 1933, of Textile Members of Fashion Originators Guild of America, Inc.

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13469

**Commission's Exhibit 246-B.**

Minutes of Regular Meeting of October 18, 1933, of Textile Members of Fashion Originators Guild of America, Inc.

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**Commission's Exhibit 246-C.**

Minutes of Regular Meeting of November 7, 1934, of Textile Members of Fashion Originators Guild of America, Inc.

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**Commission's Exhibit 246-D.**

13470

Minutes of Special Meeting of January 8, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

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**Commission's Exhibit 246-E.**

Minutes of Special Meeting of January 25, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

4491

*Statement of Exhibits.*

13471

**Commission's Exhibit 246-F.**

Minutes of Special Meeting of February 11, 1935, of  
Textile Members of Fashion Originators Guild of America,  
Inc.

**Commission's Exhibit 246-G.**

Minutes of Special Meeting of February 20, 1935, of  
Textile Members of Fashion Originators Guild of America,  
Inc.

**Commission's Exhibit 246-H.**

13472

Minutes of Regular Meeting of March 5, 1935, of Textile  
Members of Fashion Originators Guild of America,  
Inc.

**Commission's Exhibit 246-I.**

First page of Minutes of Regular Meeting of March 19,  
1935, of Textile Members of Fashion Originators Guild of  
America, Inc.

**Commission's Exhibit 246-J.**

Second page of Minutes of Regular Meeting of March  
19, 1935, of Textile Members of Fashion Originators  
Guild of America, Inc.

13473

**Commission's Exhibit 246-K.**

First page of Minutes of Regular Meeting of April 18,  
1935, of Textile Members of Fashion Originators Guild of  
America, Inc.

13474

*Statement of Exhibits.***Commission's Exhibit 246-L.**

Second page of Minutes of Regular Meeting of April 18, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

**Commission's Exhibit 246-M.**

Minutes of Regular Meeting of May 8, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

**Commission's Exhibit 246-N.**

13475

First page of Minutes of Regular Meeting of June 6, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

**Commission's Exhibit 246-O.**

Second page of Minutes of Regular Meeting of June 6, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

**Commission's Exhibit 246-P.**

Minutes of Regular Meeting of June 25, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

13476

**Commission's Exhibit 246-Q.**

Minutes of Regular Meeting of July 16, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

**Commission's Exhibit 246-R.**

First page of Minutes of Regular Meeting of July 23, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

*Statement of Exhibits.*

13477

**Commission's Exhibit 246-S.**

Second page of Minutes of Regular Meeting of July 23, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

**Commission's Exhibit 246-T.**

Third page of Minutes of Regular Meeting of July 23, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

**Commission's Exhibit 246-U.**

13478

Fourth page of Minutes of Regular Meeting of July 23, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

**Commission's Exhibit 246-V.**

Fifth page of Minutes of Regular Meeting of July 23, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

**Commission's Exhibit 246-W.**

Minutes of Meeting of August 21, 1935, of Textile Associates Committee.

13479

**Commission's Exhibit 246-X.**

First page of Minutes of Regular Meeting of September 28, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

13480

*Statement of Exhibits.*

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**Commission's Exhibit 246-Y.**

Second page of Minutes of Regular Meeting of September 28, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

**Commission's Exhibit 246-Z.**

First page of Minutes of Regular Meeting of November 18, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

13481

**Commission's Exhibit 246-AA.**

Second page of Minutes of Regular Meeting of November 18, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

**Commission's Exhibit 246-BB.**

Third page of Minutes of Regular Meeting of November 18, 1935, of Textile Members of Fashion Originators Guild of America, Inc.

**Commission's Exhibit 246-CC.**

13482

Minutes of Meeting of January 20, 1936, of Embroidery Group of the Textile Division of Fashion Originators Guild of America, Inc.

**Commission's Exhibit 246-DD.**

First page of Minutes of Meeting of January 22, 1936, of Embroidery Group of Textile Division of Fashion Originators Guild of America, Inc.

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**Commission's Exhibit 246-EE.**

Second page of Minutes of Meeting of January 22, 1936, of Embroidery Group of Textile Division of Fashion Originators Guild of America, Inc.

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**Commission's Exhibit 247.**

Minutes of Meeting of February 3, 1936, of Embroidery Group of Textile Division of Fashion Originators Guild of America, Inc.

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**Commission's Exhibits 248-A and 248-B.**

13484

Minutes of Regular Meeting of February 21, 1936, of Textile Division of Fashion Originators Guild of America, Inc.

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**Commission's Exhibits 249-A and 249-B.**

Minutes of Meeting of February 3, 1936, of Screen Print Group affiliated with Textile Division of Fashion Originators Guild of America, Inc.

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**Commission's Exhibit 250.**

Form of Declaration of Co-operation in use by Textile Division of Fashion Originators Guild of America, Inc.

13485

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**Commission's Exhibit 251.**

Telegram of J. M. Golby to George Gleason, Michigan Avenue-Guild, dated May 2, 1935, re resignation of Salta Knitting Mills, Inc.

13486

*Statement of Exhibits.***Commission's Exhibit 252.**

Letter to Members of Michigan Avenue Guild, dated May 4, 1935, by George Gleason advising that Salta Knitting Mills, Inc., resigned.

**Commission's Exhibits 253-A and 253-B.**

Letter of J. M. Golby to George Gleason, dated May 31, 1935, on letterhead of Fashion Originators Guild of America, Inc.

13487

**Commission's Exhibit 254-A.**

Letter of Michigan Avenue Guild to A. M. Post, Fashion Originators Guild of America, Inc., dated May 24, 1935, on letterhead of Michigan Avenue Guild.

**Commission's Exhibit 254-B.**

List of Non-Guild Manufacturers annexed to 254-A.

**Commission's Exhibit 255.**

Letter of A. H. Marshall to George Gleason, dated May 25, 1935, on letterhead of Marshall & Marshall.

13488

**Commission's Exhibits 256-A and 256-B.**

Two-page letter of A. M. Post to A. H. Marshall, dated May 27, 1935, on letterhead of Fashion Originators Guild of America, Inc.

**Commission's Exhibits 257-A to 257-C.**

Memorandum to Board of Governors of Fashion Originators Guild of America, Inc., signed by A. M. Post re Michigan Avenue Guild contract.

*Statement of Exhibits.*

13489

**Commission's Exhibit 258.**

Letter of Ed. Fletcher to J. M. Golby, dated June 10, 1935, on letterhead of Michigan Avenue Guild.

**Commission's Exhibit 259.**

Letter of J. M. Golby to Ed. Fletcher, dated June 13, 1935, on letterhead of Fashion Originators Guild of America, Inc.

**Commission's Exhibit 260.**

Letter of Ed. Fletcher to J. M. Golby, dated June 17, 1935, on letterhead of Michigan Avenue Guild. 13490

**Commission's Exhibit 261.**

Declaration of Co-operation of Morris B. Sacks to Fashion Originators Guild of America, Inc., dated June 20, 1935.

**Commission's Exhibit 262.**

Letter of J. M. Golby to Ed. Fletcher, dated June 21, 1935, on letterhead of Fashion Originators Guild of America, Inc.

**Commission's Exhibits 263-A and 263-B.**

13491

Two-page letter of A. H. Marshall to A. M. Post, dated June 25, 1935, on letterhead of Michigan Avenue Guild.

**Commission's Exhibit 264.**

Letter of Ed. Fletcher to J. M. Golby, dated June 27, 1935, on letterhead of Michigan Avenue Guild.

*Statement of Exhibits.*

**Commission's Exhibits 265-A and 265-B.**

Letter of J. M. Golby to A. H. Marshall, dated June 27, 1935, on letterhead of Fashion Originators Guild of America, Inc.

**Commission's Exhibit 266.**

Letter of A. H. Marshall to J. M. Golby, dated July 1, 1935, on letterhead of Marshall & Marskall.

**Commission's Exhibit 267.**

13493

Letter of A. M. Post to A. H. Marshall, dated July 3, 1935, on letterhead of Fashion Originators Guild of America, Inc.

**Commission's Exhibit 268.**

Letter of A. H. Marshall to A. M. Post, dated July 6, 1935, on letterhead of Michigan Avenue Guild.

**Commission's Exhibit 269.**

Letter of A. M. Post to A. H. Marshall, dated July 8, 1935, on letterhead of Fashion Originators Guild of America, Inc.

13494

**Commission's Exhibit 270.**

Letter of J. M. Golby to Ed. Fletcher, dated July 11, 1935, on letterhead of Fashion Originators Guild of America, Inc.

**Commission's Exhibit 271.**

Letter of Marshall to A. M. Post, dated July 16, 1935, on letterhead of Michigan Avenue Guild.

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**Commission's Exhibit 272.**

Letter of A. M. Post to A. H. Marshall, dated July 26, 1935, on letterhead of Fashion Originators Guild of America, Inc.

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**Commission's Exhibit 273.**

Letter of Marshall to A. M. Post, dated July 26, 1935, on letterhead of Michigan Avenue Guild.

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**Commission's Exhibit 274.**

Letter of J. M. Golby to Ed. Fletcher, dated August 2, 1935, on letterhead of Fashion Originators Guild of America, Inc. 13496

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**Commission's Exhibit 275.**

Letter of Ed. Fletcher to J. M. Golby, dated August 6, 1935, on letterhead of Michigan Avenue Guild.

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**Commission's Exhibit 276.**

Letter of Ed. Fletcher to J. M. Golby, dated August 6, 1935, on letterhead of Michigan Avenue Guild.

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**Commission's Exhibit 277-A.**

13497

Letter of J. M. Golby to Ed. Fletcher, dated August 13, 1935, on letterhead of Fashion Originators Guild of America, Inc.

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**Commission's Exhibits 277-B to 277-F.**

Copy letter of Weisman, Quinn, Allan & Spett, signed by Herbert S. Keller, to Fashion Originators Guild of America, Inc., dated August 12, 1935.

13498

*Statement of Exhibits.***Commission's Exhibit 278.**

Letter of Ed. Fletcher to J. M. Golby, dated August 15, 1935, on letterhead of Michigan Avenue Guild.

**Commission's Exhibit 279.**

Letter of J. M. Golby to Ed. Fletcher, dated August 19, 1935, on letterhead of Fashion Originators Guild of America, Inc.

**Commission's Exhibit 280.**

13499

Letter of Ed. Fletcher to J. M. Golby, dated September 7, 1935, on letterhead of Michigan Avenue Guild.

**Commission's Exhibits 281-A and 281-B.**

Report for the month of February, 1936, entitled "Manufacturers and Number of Complaints Handled for Them."

**Commission's Exhibits 282-A and 282-B.**

Report for month of March, 1936, entitled "Manufacturers and Number of Complaints Handled for Them."

13500

**Commission's Exhibit 283.**

Advertisement in Women's Wear Daily of January 6, 1936, inserted by Textile Division of Fashion Originators Guild of America, Inc.

**Commission's Exhibit 284.**

Advertisement in Women's Wear Daily of December 23, 1935, by Industrial Design Registration Bureau, of National Federation of Textiles, Inc.

4501

*Statement of Exhibits.*

13501

**Commission's Exhibit 285-A to 285-E.**

List of dress manufacturers who signed Declaration of Co-operation to buy only registered textiles.

**Commission's Exhibit 286.**

Return invoice, "The Palace," dated September 27, 1935.

**Commission's Exhibit 287.**

Credit return invoice of Jordan, Marsh & Co., dated October 9, 1935.

13502

**Commission's Exhibit 288.**

Post card, return goods notice, Marshall Field to Melba Dress, dated October 10, 1935.

**Commission's Exhibit 289.**

Return goods notice of Kresge to Melba Dress, dated October 17, 1935.

**Commission's Exhibit 290.**

Return goods notice of Marshall Field to Melba Dress, dated October 10, 1935.

13503

**Commission's Exhibit 291.**

Credit charge of Marshall Field to Melba Dress, dated October 19, 1935.

13504

*Statement of Exhibits.*

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**Commission's Exhibit 292.**

Letter of Melba Dress to Marshall Field on letterhead of Melba Dress, dated October 8, 1935.

**Commission's Exhibit 293.**

Letter of Marshall Field to Melba Dress, dated October 10, 1935.

**Commission's Exhibit 295.**

13505 Return invoice of Snellenberg, Lot No. 215, dated October 19, 1935.

**Commission's Exhibit 296.**

Letter of Klines to Melba Dress re return of seven dresses, dated October 11, 1935.

**Commission's Exhibit 297.**

Receipt for return of Klines, No. 39954, dated September 27, 1935.

**Commission's Exhibit 298.**

13506 Receipt for return of Klines, No. 38113, dated September 23, 1935.

**Commission's Exhibit 299.**

Letter of Carson, Pirie, Scott & Co. to Melba Dress, dated August 4, 1935, on their own letterhead.

*Statement of Exhibits.*

13507

**Commission's Exhibit 300..**

Return invoice from Carson, Pirie, Scott & Co. to Melba Dress, dated October 18, 1935.

**Commission's Exhibit 301-A.**

Letter from The Palace Clothing Co. to Melba Dress, dated October 25, 1935.

**Commission's Exhibit 301-B.**

Credit memorandum from The Palace to Melba Dress enclosed in Exhibit 301-A.

13508

**Commission's Exhibit 302.**

Letter of Leah Rubinstein to Melba Dress, dated October 28, 1935.

**Commission's Exhibit 303-A.**

Order from Frank & Seder to Melba Dress, dated August 10, 1935.

**Commission's Exhibit 303-B.**

Letter from Frank & Seder to Melba Dress, dated November 1, 1935.

13509

**Commission's Exhibit 303-C.**

Letter from Melba Dress to Frank & Seder, dated November 2, 1935.

13510

*Statement of Exhibits.*

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**Commission's Exhibit 304.**

Order from Philip Sapadin, with warranty clause, to Samuel Hoffman, Inc., dated August 29, 1935.

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**Commission's Exhibit 306.**

Order of Gimbel Bros. to Noxall Waist & Dress Co., dated September 17, 1935.

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**Commission's Exhibit 307.**

13511

Return memorandum of R. H. White to Noxall Waist & Dress Co., dated October 30, 1935.

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**Commission's Exhibit 308.**

Letter of Noxall Waist & Dress Co. to R. H. White, dated November 1, 1935.

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**Commission's Exhibit 309.**

Letter of R. H. White to Noxall Waist & Dress Co., dated November 11, 1935.

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**Commission's Exhibit 310.**

13512

Return invoices from Kaufmann's to Noxall Waist & Dress Co., dated October 5, 1935.

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**Commission's Exhibit 311.**

Return invoices from Kaufmann's to Noxall Waist & Dress Co., dated October 8, 1935.

*Statement of Exhibits.*

13513

**Commission's Exhibit 312.**

Return invoices from Kaufmann's to Noxall Waist & Dress Co., dated October 12, 1935.

**Commission's Exhibit 313.**

Letter from Kaufmann's to Noxall Waist & Dress Co., dated October 5, 1935.

**Commission's Exhibit 314.**

Carbon Copy of letter from Noxall Waist & Dress Co. to Kaufmann's, dated October 14, 1935.

13514

**Commission's Exhibit 315.**

Letter of Kaufmann's to Noxall Waist & Dress Co., dated October 15, 1935.

**Commission's Exhibit 316.**

Letter of Joseph Horne Co. to Noxall Waist & Dress Co., dated October 4, 1935.

**Commission's Exhibit 317.**

Carbon copy of letter from Noxall Waist & Dress Co. to Joseph Horne Co., dated October 5, 1935.

13515

**Commission's Exhibit 318.**

Return invoice from Lurie's to Noxall Waist & Dress Co., dated October 9, 1935.

13516

*Statement of Exhibits.***Commission's Exhibit 319.**

Letter from Lurie's to Noxall Waist & Dress Co., dated October 9, 1935.

**Commission's Exhibit 320.**

Carbon copy of letter from Noxall Waist & Dress Co. to Lurie's, dated October 14, 1935.

**Commission's Exhibit 321.**

13517 Return slip from Schunemans & Manheimers to Noxall Waist & Dress Co., dated February 10, 1936.

**Commission's Exhibit 322.**

Carbon copy of letter from Noxall Waist & Dress Co. to Schunemans & Manheimers, dated February 13, 1936.

**Commission's Exhibit 323.**

Notice from Railway Express to Noxall Waist & Dress Co. that goods returned by Schunemans & Mainheimers were in New York, dated March 14, 1936.

**Commission's Exhibit 324.**

13518

Letter from Schunemans & Manheimers to Noxall Waist & Dress Co., dated March 16, 1936.

**Commission's Exhibit 325.**

Carbon copy of letter from Noxall Waist & Dress Co. to Schunemans & Manheimers, dated March 18, 1936.

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**Commission's Exhibit 326.**

Letter from Schunemans & Manheimers to Noxall Waist & Dress Co., dated April 11, 1936.

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**Commission's Exhibit 327.**

Carbon copy of letter from Noxall Waist & Dress Co. to Railway Express, dated April 14, 1936.

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**Commission's Exhibit 328.**

Carbon copy of letter from Noxall Waist & Dress Co. to Schunemans & Manheimers, dated April 14, 1936.

13520

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**Commission's Exhibit 329.**

Carbon copy of letter from Noxall Waist & Dress Co. to Schunemans & Manheimers, dated April 19, 1936.

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**Commission's Exhibit 330.**

Carbon copy of letter from Noxall Waist & Dress Co. to Schunemans & Manheimers, dated April 28, 1936.

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**Commission's Exhibit 331.**

Carbon copy of letter from Kaufmann Department Stores to Trussel Dress Co., dated October 9, 1935.

13521

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**Commission's Exhibit 332.**

Carbon copy of letter from The Jones Store to Trussel Dress Co., dated October 26, 1935.

13522

*Statement of Exhibits.*

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**Commission's Exhibit 333.**

Carbon copy of letter from Trussel Dress Co. to The Jones Store, dated October 30, 1935.

**Commission's Exhibit 334.**

Carbon copy of letter from John Wanamaker, Philadelphia, to Trussel Dress Co., dated November 8, 1935.

**Commission's Exhibit 335.**

13523

Carbon copy of letter from Fashion Originators Guild of America, Inc., to Trussel Dress Co., dated June 24, 1936.

**Commission's Exhibit 336-A.**

Letter from Wm. Filene Sons Co. to Excellent Dress Co., dated November 6, 1935.

**Commission's Exhibit 336-B.**

Letter from Excellent Dress Co. to Wm. Filene Sons Co., dated November 6, 1935.

**Commission's Exhibit 349.**

13524

Invoice credit from Wm. Filenes' Sons Co. to Excellent Dress, dated November 8, 1935.

**Commission's Exhibit 352-B.**

Carbon copy of letter from Lombardy Frocks, Inc., to Wm. Filenes' Sons Co., dated October 15, 1935.

*Statement of Exhibits.*

13525

**Commission's Exhibit 352-C.**

Notice of return from Wm. Filenes' Sons Co. to Lombardy Frocks, Inc., undated.

**Commission's Exhibit 352-D.**

Notice of return from Wm. Filenes' Sons Co. to Lombardy Frocks, Inc., undated.

**Commission's Exhibit 357.**

List of Guild houses with whom Wm. Filenes' Sons Co. did business during 1935-1936.

13526

**Commission's Exhibit 358.**

Letter to Guild manufacturers to send merchandise on order during hearing of Filenes' injunction action, dated March 9, 1936.

**Commission's Exhibit 359.**

Fashion Originators Guild of America, Inc., notice to Wm. Filenes' Sons Co. that Silver Pom Garment is copy, dated November 23, 1935.

**Commission's Exhibit 360.**

13527

List of dresses returned to manufacturers by R. H. White at request of Fashion Originators Guild of America, Inc., from September 25, 1935, to January 31, 1936.

**Commission's Exhibit 361-A.**

Letter from Fashion Originators Guild of America, Inc., to R. H. White, dated November 7, 1935.

13528

*Statement of Exhibits.***Commission's Exhibit 361-B.**

Letter from Fashion Originators Guild of America, Inc., to R. H. White, dated November 7, 1935.

**Commission's Exhibit 362.**

Strawbridge & Clothier Declaration of Co-operation, dated June 30, 1933.

**Commission's Exhibit 363.**

Carbon copy of letter of Strawbridge & Clothier to Fashion Originators Guild of America, Inc., dated June 30, 1933.

13529

**Commission's Exhibit 364.**

Carbon copy of letter of Strawbridge & Clothier to A. M. Post, dated February 6, 1936.

**Commission's Exhibit 366.**

Letter from Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, dated February 4, 1936.

**Commission's Exhibit 367-A.**

New ten-point Declaration of Co-operation between Fashion Originators Guild of America, Inc., and retail store.

13530

**Commission's Exhibit 367-B.**

New ten-point Declaration of Co-operation between Fashion Originators Guild of America, Inc., and retail store.

**Commission's Exhibit 368.**

Letter from Roth, Jackson & Immerman to Strawbridge & Clothier, dated June 29, 1933.

*Statement of Exhibits.*

13531

**Commission's Exhibit 369.**

Letter from Bender & Hamburger to Strawbridge & Clothier, dated June 29, 1933.

**Commission's Exhibit 370.**

Letter from Myron Herbert & Charles Cooper to Strawbridge & Clothier, dated June 27, 1933.

**Commission's Exhibit 371.**

Letter from Kallman & Cohn, Inc., to Strawbridge & Clothier, dated June 29, 1933.

13532

**Commission's Exhibit 372.**

Letter from Cohn & Holt to Strawbridge & Clothier, dated June 29, 1933.

**Commission's Exhibit 373.**

Letter from Milgrim to Strawbridge & Clothier, dated June 29, 1933.

**Commission's Exhibit 374.**

Letter from Edward Gerrick Co., Inc., to Strawbridge & Clothier, dated June 28, 1933.

**Commission's Exhibit 375.**

13533

Letter from Fashion Originators Guild of America, Inc. (Goldston), to Strawbridge & Clothier, dated January 24, 1934.

**Commission's Exhibit 376.**

Letter from Fashion Originators Guild of America, Inc. (Goldston), to Strawbridge & Clothier, dated January 25, 1934.

13534

*Statement of Exhibits.*

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**Commission's Exhibit 377-A.**

Sketch enclosed in Commission's Exhibit 377-B.

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**Commission's Exhibit 377-B.**

Letter from Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, dated June 18, 1934.

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**Commission's Exhibit 378-A.**

Letter from Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, dated June 21, 1934.

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13535

**Commission's Exhibit 378-B.**

Letter from Strawbridge & Clothier to Fashion Originators Guild of America, Inc., dated June 23, 1934.

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**Commission's Exhibit 379.**

Letter from Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, dated July 1, 1934.

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**Commission's Exhibit 380-A.**

Letter from J. M. Golby to Strawbridge & Clothier, dated July 28, 1934.

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**Commission's Exhibit 380-B.**

13536      Reply from Strawbridge & Clothier to Fashion Originators Guild of America, Inc., dated August 14, 1934.

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**Commission's Exhibit 381-A.**

Letter from Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, dated January 24, 1935.

**Commission's Exhibit 381-B.**

Reply from Strawbridge & Clothier to Fashion Originators Guild of America, Inc., dated February 1, 1935.

**Commission's Exhibit 382-A.**

Letter from Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, dated September 14, 1935.

**Commission's Exhibit 382-B.**

Letter from Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, dated September 13, 1935.

13538

**Commission's Exhibit 382-C.**

Sketches attached to Commission's Exhibit 382-B.

**Commission's Exhibit 382-D.**

Sketches attached to Commission's Exhibit 382-B.

**Commission's Exhibit 382-E.**

Sketches attached to Commission's Exhibit 382-B.

**Commission's Exhibit 383.**

13539

Form letter from Fashion Originators Guild of America, Inc., to Strawbridge & Clothier—Bon Ray Dance Frock, dated October 10, 1935.

**Commission's Exhibit 384.**

Form letter from Fashion Originators Guild of America, Inc., to Strawbridge & Clothier, undated—LaRue Dresses, Inc.

13540

*Statement of Exhibits.***Commission's Exhibit 385.**

Form letter from Fashion Originators Guild of America Inc., to Strawbridge & Clothier, dated October 29, 1935-Spectator Sports.

**Commission's Exhibit 386.**

Letter from A. M. Post to Charles Taylor of Strawbridge & Clothier, dated November 8, 1935.

**Commission's Exhibit 387-A.**

13541

Letter from A. M. Post to Charles Taylor of Strawbridge & Clothier, dated November 23, 1935.

**Commission's Exhibit 387-B.**

Letter from A. M. Post to Charles Taylor of Strawbridge & Clothier, dated November 23, 1935.

**Commission's Exhibit 388.**

Letter from A. M. Post to Charles Taylor of Strawbridge & Clothier, dated November 25, 1935.

**Commission's Exhibit 389.**

13542

Carbon copy of letter from Charles Taylor of Strawbridge & Clothier to A. M. Post, dated November 29, 1935.

**Commission's Exhibit 390.**

Letter from A. M. Post to Charles Taylor of Strawbridge & Clothier, dated December 2, 1935.

**Commission's Exhibit 391.**

Letter from Fashion Originators Guild of America, Inc. (J. Goldston), to Charles Taylor of Strawbridge & Clothier, dated December 16, 1935.

**Commission's Exhibit 392-A.**

Letter from A. M. Post to Charles Taylor of Strawbridge & Clothier, dated December 26, 1935.

**Commission's Exhibit 392-B.**

Reply letter from Charles Taylor of Strawbridge & Clothier to A. M. Post, dated December 28, 1935.

13544

**Commission's Exhibit 393-A.**

Letter from A. M. Post to Charles Taylor of Strawbridge & Clothier, dated January 13, 1936.

**Commission's Exhibit 393-B.**

Reply letter from Charles Taylor of Strawbridge & Clothier to A. M. Post, dated January 17, 1936.

**Commission's Exhibits 394-A and 394-B.**

Letter from A. M. Post to Charles Taylor of Strawbridge & Clothier, dated January 18, 1936.

13545

**Commission's Exhibit 395.**

Carbon copy of letter from Charles Taylor of Strawbridge & Clothier to A. M. Post, dated January 20, 1936.

13543

*Statement of Exhibits.***Commission's Exhibits 396-A and 396-B.**

Letter from A. M. Post to Charles Taylor of Strawbridge & Clothier, dated January 18, 1936.

**Commission's Exhibit 397.**

Letter from A. M. Post to Charles Taylor of Strawbridge & Clothier, dated January 27, 1936.

**Commission's Exhibits 398-A and 398-B.**

13547

Letter from A. M. Post to Charles Taylor of Strawbridge & Clothier, dated January 29, 1936.

**Commission's Exhibits 398-C and 398-D.**

November 5, 1935, form letter re piracy from A. M. Post to retail stores.

**Commission's Exhibits 398-E and 398-F.**

Copy of letter from A. M. Post to H. O. Bergdahl, dated November 21, 1935.

**Commission's Exhibits 399-A and 399-B.**

13548

List of manufacturers, members of the Fashion Originators Guild of America, Inc., Spring, 1935.

**Commission's Exhibit 400.**

Table of orders, February 15, 1936, to March 5, 1936, date placed, where and amounts, Department 331 of Strawbridge & Clothier.

*Statement of Exhibits.*

13549

**Commission's Exhibit 401.**

Table of cost of goods that Strawbridge & Clothier couldn't get from January 18, 1936, to January 31, 1936.

**Commission's Exhibit 402.**

Comparative increase or decrease for Department 350 of Strawbridge & Clothier—1936 as against 1935—in percentages.

**Commission's Exhibit 403.**

Retail price line comparison, 1935 vs. 1936—Department 350 of Strawbridge & Clothier. 13550

**Commission's Exhibit 410.**

List of Fashion Originators Guild of America, Inc., manufacturers and amount of business transacted—February 1, 1935, to January 31, 1936—with Strawbridge & Clothier.

**Commission's Exhibit 411.**

Price line comparison—February-June, 1935-1936—Department 331 of Strawbridge & Clothier.

**Commission's Exhibit 412.**

13551

Retail price line comparison—February-June, 1935-1936—Department 338 of Strawbridge & Clothier.

**Commission's Exhibit 413.**

Retail price line comparison—February-June, 1935-1936—Department 358 of Strawbridge & Clothier.

13552

*Statement of Exhibits.***Commission's Exhibit 414.**

Retail price line comparison—February-June, 1935-1936—Department 371 of Strawbridge & Clothier.

**Commission's Exhibit 415.**

Figures on loss of business (copy made from Tiley) February-June, 1935-1936, of Strawbridge & Clothier.

**Commission's Exhibit 416.**

Carbon copy of letter from Strawbridge & Clothier to  
13553 S. H. D. Robbins, dated March 5, 1936.

**Commission's Exhibit 417.**

Carbon copy of letter from Strawbridge & Clothier to  
Herman Biespeil, dated March 5, 1936.

**Commission's Exhibit 418.**

Carbon copy of letter from Strawbridge & Clothier to  
Frank-Starr Friedlander, dated March 5, 1936.

**Commission's Exhibit 419.**

Carbon copy of letter from Strawbridge & Clothier to  
13554 Robinson Brothers, dated March 5, 1936.

**Commission's Exhibit 420.**

Carbon copy of letter from Strawbridge & Clothier to  
Harry Frank, dated March 5, 1936.

**Commission's Exhibit 421.**

Carbon copy of letter from Strawbridge & Clothier to Henry Gans, dated March 5, 1936.

**Commission's Exhibit 422.**

Carbon copy of letter from Strawbridge & Clothier to Goldstein & Entin, dated March 5, 1936.

**Commission's Exhibit 423.**

Carbon copy of letter from Strawbridge & Clothier to Gardner Schwartz, dated March 5, 1936.

13556

**Commission's Exhibit 434.**

Recapitulation of returns, Department 491 of Strawbridge & Clothier, from August 12, 1935, to January 16, 1936.

**Commission's Exhibit 435.**

Return invoice from Strawbridge & Clothier to Brenner & Weinstein, dated December 23, 1935.

**Commission's Exhibit 436.**

Return invoice from Strawbridge & Clothier to Tobia Dress, dated December 16, 1935.

13557

**Commission's Exhibit 437.**

Return invoice from Strawbridge & Clothier to Jomax Frocks, dated December 16, 1935.

13558

*Statement of Exhibits.***Commission's Exhibit 438.**

Return invoice from Strawbridge & Clothier to Pal  
Frocks, dated September 11, 1935.

**Commission's Exhibit 439.**

Return invoice from Strawbridge & Clothier to N  
Emporium Dress, dated December 5, 1935.

**Commission's Exhibit 440.**

13559 Return invoice from Strawbridge & Clothier to A  
Dress, dated January 16, 1936.

**Commission's Exhibit 441.**

Return invoice from Strawbridge & Clothier to Sil  
Pom Dress, dated August 12, 1935.

**Commission's Exhibit 442.**

Copy of return invoice from Strawbridge & Clothier  
Lucky Style, dated October 16, 1935.

**Commission's Exhibit 443.**

13560 Copy of return invoice from Strawbridge & Clothier  
Puritan Dress, dated November 26, 1935.

**Commission's Exhibit 444.**

Copy of return invoice from Strawbridge & Clothier  
Feinberg & Weisen, dated September 11, 1935.

4521

*Statement of Exhibits.*

13561

**Commission's Exhibit 445.)**

Copy of return invoice from Strawbridge & Clothier to Tiljane Costume, dated September 11, 1935.

**Commission's Exhibit 446.**

Copy of return invoice from Straybridge & Clothier to Gladly True Size, dated September 11, 1935.

**Commission's Exhibits 450-A to 450-P.**

List of sixteen pages constituting a list of resources sent to Strawbridge & Clothier by the American Merchandising Corporation.

13562

**Commission's Exhibits 451-A and 451-B**

Form letter from Maurice Rentner to A. H. Burchfield of Joseph Horne Co., dated March 23, 1932.

**Commission's Exhibit 452.**

Reply to 451 from A. E. Oxenreiter of Joseph Horne Co. to Fashion Originators Guild of America, Inc., dated March 29, 1932.

**Commission's Exhibit 453.**

13563

Answer to 452 from Fashion Originators Guild of America, Inc., to A. E. Oxenreiter of Joseph Horne & Co.

**Commission's Exhibits 454-A to 454-M.**

Letter from Maurice Rentner to H. C. Gutsche of Joseph Horne Co. with form of agreement annexed, dated December 16, 1932.

13564

*Statement of Exhibits.***Commission's Exhibits 455-A and 455-B.**

Letter from Fashion Originators Guild of America, Inc. to H. C. Gutsche of Joseph Horne Co., dated June 19, 1933, Exhibit M of Filenes-Temp. N. Y.

**Commission's Exhibits 456-A and 456-B.**

Memorandum of Guild's resolution and its significance adopted at Fashion Originators Guild of America, Inc. meeting on June 12, 1933.

13565

**Commission's Exhibit 457.**

Declaration of Co-operation of Joseph Horne Co. signed by W. H. Burchfield, Vice-President.

**Commission's Exhibit 458.**

Carbon copy of letter from Joseph Horne Co. to Fashion Originators Guild of America, Inc., dated June 27, 1933.

**Commission's Exhibit 460.**

List of returns from February 21, 1935, to June 23, 1936, of Joseph Horne Co.

13566

**Commission's Exhibit 470.**

List of houses from whom purchases were made in 1935 and Spring of 1936 by William Taylor Son & Co. of Cleveland, Ohio.

**Commission's Exhibit 471.**

List of purchases of Guild houses by William Taylor Son & Co. of Cleveland, Ohio.

*Statement of Exhibits.*

13567

**Commission's Exhibit 472.**

Amount of orders outstanding at time of red card by William Taylor Son & Co. of Cleveland, Ohio.

**Commission's Exhibit 473.**

Figures showing loss and effect of red card on the business, 1936 or 1935, of William Taylor Son & Co.

**Commission's Exhibit 474.**

Telegram addressed to Fashion Originators Guild of America, Inc., from The Bailey Co., The Lindner Co., The Halle Bros. Co., William Taylor Son & Co., The Higbee Co., The May Co. of Cleveland, Ohio.

13568

**Commission's Exhibit 475.**

Original Declaration of Co-operation from J. L. Hudson Co. to Fashion Originators Guild of America, Inc., received on June 22, 1933.

**Commission's Exhibit 476.**

Letter from Fashion Originators Guild of America, Inc., to J. L. Hudson Co. returning to J. L. Hudson Declaration of Co-operation, dated February 14, 1936.

13569

**Commission's Exhibit 477-A.**

A carbon copy of registered letter of J. L. Hudson Co. to Fashion Originators Guild of America, Inc., dated February 27, 1936, acknowledging letter of February 14, 1936.

**Commission's Exhibit 477-B.**

Return receipt for the registered letter (477-A).

13570

*Statement of Exhibits.***Commission's Exhibit 478-A.**

List of Guild houses from whom J. L. Hudson Co. bought dresses during fiscal year 1935 (to January 31, 1936).

**Commission's Exhibit 478-B.**

List of suit Guild houses as 478-A.

**Commission's Exhibit 478-C.**

List of Guild Houses used in better coats and evening wraps as Commission's Exhibit 478-A.

13571

**Commission's Exhibit 479-A.**

J. L. Hudson Co. list of outstanding orders with Fashion Originators Guild of America, Inc., members as of February 15, 1936.

**Commission's Exhibits 479-B and 479-C.**

List of merchandise on order with Guild houses at time of red carding as of February 15, 1936, by J. L. Hudson Co.

**Commission's Exhibits 480-A and 480-B.**

Letter from Maurice Rentner of Fashion Originators Guild of America, Inc., to L. B. Sappington of J. L. Hudson Co., dated June 16, 1933.

13572

**Commission's Exhibits 480-C and 480-D.**

Memorandum on Guild's Resolution and its significance adopted June 12, 1933.

**Commission's Exhibit 481.**

Memorandum from Tauff to Sappington, analysis of Department 338 of J. L. Hudson Co., dated August 3, 1933.

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**Commission's Exhibits 482-A and 482-B.**

Memorandum from Tauff to Sappington—analysis of Department 351, J. L. Hudson Co. (only figures went into evidence—remainder to remain as 482-A and 482-B for Identification).

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**Commission's Exhibits 483-A and 483-B.**

Effect of red carding in Jr. Miss Department of J. L. Hudson Co. Memorandum from Dunham to Sappington, dated August 1, 1936 (only figures went into evidence—remainder to remain as 483-A and 483-B for Identification).

13574

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**Commission's Exhibit 484.**

Net price sales in dress departments of J. L. Hudson Co. for year 1935.

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**Commission's Exhibit 485.**

Comparative study of Fashion Originators Guild of America, Inc., affected departments showing percentages comparing February to July, 1935 and 1936.

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**Commission's Exhibit 486.**

Telegram dated June 17, 1933, from H. O. Bergdahl to J. L. Hudson Co.

13575

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**Commission's Exhibit 487.**

Copy of letter from L. B. Sappington of J. L. Hudson Co. to J. Goldston of Fashion Originators Guild of America, Inc., dated January 31, 1935.

13576

*Statement of Exhibits***Commission's Exhibit 488-A and 488-B.**

Letter from A. M. Post to L. B. Sappington of J. L. Hudson Co., dated February 4, 1936, on letterhead of Fashion Originators Guild of America, Inc.

**Commission's Exhibit 489.**

Telegram from L. B. Sappington of J. L. Hudson Co. to H. O. Bergdahl, dated May 8, 1935.

**Commission's Exhibit 490.**

13577

Telegram from H. O. Bergdahl to L. B. Sappington of J. L. Hudson Co., dated May 8, 1935.

**Commission's Exhibits 491-A and 491-B.**

Copy of letter from L. B. Sappington of J. L. Hudson Co. to H. O. Bergdahl, dated May 9, 1935.

**Commission's Exhibits 492-A to 492-C.**

Letter from A. M. Post to M. F. Dowley of J. L. Hudson Co., dated November 18, 1935, on letterhead of Fashion Originators Guild of America, Inc.

13578

**Commission's Exhibits 493-A and 493-B.**

Memorandum from G. R. McDonald to M. F. Dowley of J. L. Hudson Co., dated November 16, 1935.

**Commission's Exhibits 494-A and 494-B.**

Copy of letter from Oscar Webber of J. L. Hudson Co. to H. O. Bergdahl, dated December 5, 1935.

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**Commission's Exhibit 495.**

Request for return slip from Fashion Originators Guild of America, Inc., to J. L. Hudson Co., No. 2330.

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**Commission's Exhibit 496 for Identification.**

Letter from H. L. Bergdahl to L. B. Sappington of J. L. Hudson Co., dated April 10, 1935.

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**Commission's Exhibits 497-A to 497-C for Identification.**

Letter from H. L. Bergdahl to Oscar Webber of J. L. Hudson Co., dated December 4, 1935. 13580

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**Commission's Exhibits 498-A to 498-E.**

Copies of order blanks of J. L. Hudson Co. with Fashion Originators Guild of America, Inc., warranty stamp thereon.

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**Commission's Exhibits 499-A to 499-C.**

Letter from A. M. Post to Oscar Webber of J. L. Hudson Co., dated February 11, 1936, on letterhead of Fashion Originators Guild of America, Inc.

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**Commission's Exhibit 500.**

13581

Telegram from Fashion Originators Guild of America, Inc., to Mr. Wilton, buyer of dress department of J. L. Hudson Co.

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**Commission's Exhibits 501-A and 501-B.**

Copy of letter from L. B. Sappington to A. M. Post of Fashion Originators Guild of America, Inc., dated February 8, 1936.

13582

*Statement of Exhibits.***Commission's Exhibit 502.**

Telegram from A. M. Post of Fashion Originators Guild of America, Inc., to L. B. Sappington of J. L. Hudson Co., dated February 10, 1936, in reply to Exhibits 501-A and 501-B.

**Commission's Exhibit 503.**

Copy of telegram from Oscar Webber of J. L. Hudson Co. to A. M. Post of Fashion Originators Guild of America, Inc., dated February 10, 1936, in reply to Exhibit 502.

13583

**Commission's Exhibit 504.**

Analysis of piece sales at various prices for Department 358 of J. L. Hudson Co. for 1935.

**Commission's Exhibit 505.**

Analysis of piece sales at various prices for Department 369 of J. L. Hudson Co. for 1935.

**Commission's Exhibit 506.**

Analysis of piece sales at various prices for Department 338 of J. L. Hudson Co. for 1935.

13584

**Commission's Exhibit 507.**

Analysis of piece sales for Department 369 at various prices for the years 1935 and 1936.

**Commission's Exhibit 508.**

Net piece sales for all departments of J. L. Hudson Co. for the spring of 1935.

*Statement of Exhibits.*

13585

**Commission's Exhibit 509.**

Net piece sales for all departments of J. L. Hudson Co. for the spring of 1936.

**Commission's Exhibit 510.**

List of Fashion Originators Guild of America, Inc., houses with whom Department 371 Junior Miss Department of J. L. Hudson Co. did business in 1935.

**Commission's Exhibit 511.**

Telegram from W. E. Simmons of J. L. Hudson Co. to Bernard Appel, Inc., of Boston, Mass., dated March 4, 1935. 13586

**Commission's Exhibit 512.**

Telegram from Bernard Appel, Inc., to W. E. Simmons of J. L. Hudson Co., dated March 5, 1935, in reply to Exhibit 511.

**Commission's Exhibit 513.**

Copy of letter from W. E. Simmons of J. L. Hudson Co. to Bernard Appel, Inc., dated March 14, 1935.

**Commission's Exhibit 514.**

13587

Letter from Bernard Appel, Inc., to W. E. Simmons of J. L. Hudson Co., dated March 15, 1935, on letterhead of Bernard Appel, Inc.

13588

*Statement of Exhibits.***Commission's Exhibits 515-A and 515-B.**

Letter from Bernard Appel, Inc., to W. E. Simmons of J. L. Hudson Co., dated March 27, 1935, on letterhead of Bernard Appel, Inc.

**Commission's Exhibits 517-A and 517-B.**

Letter from J. Goldston to L. B. Sappington of J. L. Hudson Co., dated March 16, 1935, on letterhead of Fashion Originators Guild of America, Inc.

13589

**Commission's Exhibit 518.**

Letter from L. B. Sappington of J. L. Hudson Co. to J. Goldston of Fashion Originators Guild of America, Inc.

**Commission's Exhibit 519.**

Letter from J. Goldston to L. B. Sappington of J. L. Hudson Co., dated March 25, 1935, on letterhead of Fashion Originators Guild of America, Inc.

**Commission's Exhibits 520-A and 520-B.**

13590

Letter from A. M. Post to L. B. Sappington of J. L. Hudson Co., dated April 2, 1935, on letterhead of Fashion Originators Guild of America, Inc.

**Commission's Exhibit 521.**

Letter from A. M. Post to L. B. Sappington of J. L. Hudson Co., dated April 3, 1935, on letterhead of Fashion Originators Guild of America, Inc.

*Statement of Exhibits.*

13591

**Commission's Exhibit 522.**

Report of arbitrators that Appel garment is copy of creation by Townley Frocks, Inc., which copy was enclosed in Exhibit 521.

**Commission's Exhibit 523.**

List of manufacturers who make better dresses, taken from Fairchild's Directory for fall of 1936 by type and price lines.

**Commission's Exhibit 525.**

13592

List of \$10.75 dress houses taken from Fairchild's Directory for fall of 1936.

**Commission's Exhibit 526.**

Letter from A. M. Post to Ernst Kern & Co., dated February 7, 1936, on letterhead of Fashion Originators Guild of America, Inc.

**Commission's Exhibit 527-A.**

Declaration of Co-operation in Anti-Piracy between Mandel Bros. and the Fashion Originators Guild of America, Inc.

13593

**Commission's Exhibit 527-B.**

Copy of letter from Mandel Bros. to Fashion Originators Guild of America, Inc., dated June 23, 1933, in which Exhibit 527-A was enclosed.

13594

*Statement of Exhibits.***Commission's Exhibits 528-A and 528-B.**

Letter from A. M. Post to Mandel Bros., dated November 6, 1935, on letterhead of Fashion Originators Guild of America, Inc.

**Commission's Exhibit 529.**

Copy of letter from Henry Wyzanski of Mandel Bros. to A. M. Post of Fashion Originators Guild of America, Inc., dated September 13, 1935.

13595

**Commission's Exhibits 530-A to 530-B.**

Letter from A. M. Post to Henry Wyzanski of Mandel Bros., dated September 18, 1935, on letterhead of Fashion Originators Guild of America, Inc.

**Commission's Exhibits 531-A and 531-B.**

Copy of telegram from Henry Wyzanski of Mandel Bros. to A. M. Post of Fashion Originators Guild of America, Inc., dated June 12, 1936.

**Commission's Exhibit 536.**

13596

Letter on the letterhead of Ed. Schuster & Co., Inc., Milwaukee, Wisconsin, dated July 8, 1933, addressed to Fashion Originators Guild of America, Inc., signed "Ed. Schuster & Co., Inc., by Ralph T. Friedmann, Merchandise Manager."

**Commission's Exhibit 537.**

Postcard addressed to Mr. Ralph T. Friedmann, c/o Ed. Schuster & Co., Inc., Milwaukee, Wisconsin, postmarked New York, N. Y., July 21, 1933, 7.00 P. M.; dated on the reverse side July 21, 1933; from Fashion Originators Guild of America, Inc., by J. M. Golby, Executive Secretary.

*Statement of Exhibits.*

13597

**Commission's Exhibit 538.**

Copy of letter dated March 21, 1935, addressed to Mr. Al. Post, Fashion Originators Guild of America, Inc., signed in typewriting, Ralph T. Friedmann.

**Commission's Exhibits 539-A, 539-B, 539-C, 539-D, 539-E and 539-F.**

539-A, 539-B and 539-C, letter on letterhead of Fashion Originators Guild of America, Inc., dated March 23, 1935, addressed to Mr. Ralph T. Friedmann, Ed. Schuster & Co., Inc., Milwaukee, Wisconsin, signed Fashion Originators Guild of America, Inc., Albert M. Post, Executive Director.

13598

539-D, card form, date line blank, addressed to Fashion Originators Guild of America, Inc., containing various other blank lines for information as to amount of check enclosed, store name, address, etc.

539-E and F, two-page mimeographed form letter on the letterhead of Fashion Originators Guild of America, Inc., typewritten signature Fashion Originators Guild of America, Inc., Executive Secretary.

**Commission's Exhibits 540-A and 540-B.**

Letter on letterhead of Fashion Originators Guild of America, Inc., dated July 1, 1935, addressed to Mr. Ralph T. Friedmann, Edward Schuster & Co., Milwaukee, Wisconsin, signed Fashion Originators Guild of America, Inc., by Albert M. Post, Executive Director.

13599

13600

*Statement of Exhibits.***Commission's Exhibit 542.**

Tabulation headed "Returns of dresses to vendors because Guild stated dresses were copies."

**Commission's Exhibits 543-A, 543-B and 543-C.**

Letter on letterhead of Fashion Originators Guild of America, Inc., dated September 5, 1935, addressed to Mr. Louis Libman, Ed. Schuster & Co., Inc., Milwaukee, Wisconsin, signed Fashion Originators Guild of America, Inc., Albert M. Post, Executive Director, with a postscript following, which appear the typewritten initials "A.M.P."

13601

**Commission's Exhibit 544.**

Copy of letter dated September 17, 1935, addressed to Mr. Albert M. Post, Executive Director, Fashion Originators Guild of America, Inc., with typewritten signature "Ed. Schuster & Co., Inc., Louis Liberman."

**Commission's Exhibits 545-A and 545-B.**

Letter on letterhead of Fashion Originators Guild of America, Inc., addressed to Mr. Louis Liberman, Ed. Schuster & Co., Inc., Milwaukee, Wisconsin, dated January 13, 1936, signed by Albert M. Post, Executive Director.

13602

**Commission's Exhibit 546.**

Copy of letter dated January 20, 1936, addressed to Mr. Albert M. Post, Executive Director, Fashion Originators Guild of America, Inc., typewritten signature "Louis Liberman."

*Statement of Exhibits.*

13603

**Commission's Exhibits 547-A, 547-B and 547-C.**

Letter on letterhead of Fashion Originators Guild of America, Inc., addressed to Mr. Louis Liberman, Schuster's, N. 3rd at Garfield, Milwaukee, Wisconsin, dated January 23, 1936, typewritten signature "Albert M. Post."

**Commission's Exhibit 548.**

Telegram dated New York, N. Y., February 5th, addressed "Louis Liberman, Schuster's—from Albert M. Post, Fashion Originators Guild of Ama., Inc."

**Commission's Exhibit 549.**

13604

Newspaper clippings, one headed "Dress Guild Cancels 3 Store Agreements," with pencil notation "N Y Times—2/12/36"; the other headed "Urges Further Study by Critics of FOGA" with typewritten notation "Women's Wear."

**Commission's Exhibit 550-A.**

Letter on letterhead of Fashion Originators Guild of America, Inc., dated February 11, 1936, addressed Ed. Schuster & Co., Inc., N. 3rd at Garfield, Milwaukee, Wisconsin, signed by Fashion Originators Guild of America, Inc., Albert M. Post, Executive Director.

13605

**Commission's Exhibit 550-B.**

Form headed "Declaration of Co-operation in Anti-Piracy Between (blank)—(Print store's name)—and The Fashion Originators Guild of America, Inc.)."

13606

*Statement of Exhibits.*

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**Commission's Exhibit 551.**

Tabulation headed "Exhibit C. Orders for dresses which were outstanding as of February 11, 1936, from Guild members, which manufacturer failed to complete and which were then canceled."

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**Commission's Exhibit 552.**

13607 Tabulation headed "Summary of dresses on hand in retail price lines February 10 to July 6, 1935, and 1936 combined for Departments 57 and 63."

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**Commission's Exhibit 553-A.**

Letter on letterhead of Sheila-Lynn, Inc., 1400 Broadway, New York, dated July 31, 1936, addressed Ed. Schuster Co., Milwaukee, Wisconsin, signed Sheila-Lynn, Inc., by Myra Horowitz.

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**Commission's Exhibit 553-B.**

13608 Blank form of Declaration of Co-operation in Anti-Piracy between Retail Store and Fashion Originators Guild of America, Inc.

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**Commission's Exhibits 555-A and 555-B.**

Two typewritten sheets, is entitled "List of firms whose sales to Ed. Schuster & Co., Inc., during February to June, inclusive, 1935 and 1936, were included as purchases from Guild houses for Department 63—Misses Dresses."

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**Commission's Exhibit 557.**

Typewritten page headed "Declaration of Co-operation in Anti-Piracy between Boston Store, Milwaukee, Wisconsin, and The Fashion Originators Guild of America" with typewritten signature at bottom "By W. L. Rowse—Store Name Boston Store, Milwaukee, Wisconsin."

13610

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**Commission's Exhibit 558.**

Typewritten page headed "Return Made by Boston Store to Vendors Dresses Alleged to be Copies from Sept. 1935 to Feb. 1936."

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**Commission's Exhibit 560.**

Letter on letterhead of Associated Merchandising Corporation Retail Research Association, 1440 Broadway, New York City, dated April 10, 1935, addressed to Mr. W. L. Rowse, Boston Store, signed "H. O. Bergdahl."

13611

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**Commission's Exhibit 561.**

Letter on letterhead of Associated Merchandising Corporation Retail Research Association, 1440 Broadway, New York City, dated April 15, 1935, addressed to Mr. W. L. Rowse, The Boston Store, Milwaukee, Wisconsin, signed "H. O. Bergdahl."

13612

*Statement of Exhibits.***Commission's Exhibits 562-A and 562-B.**

Letter dated May 13, 1935, addressed to Mr. W. L. Rowse, Boston Store, signed "H. O. Bergdahl."

**Commission's Exhibits 563-A and 563-B.**

Letter dated July 3, 1935, addressed to Mr. W. L. Rowse, Boston Store, signed "H. O. Bergdahl."

**Commission's Exhibit 564.**

Letter dated October 4, 1935, addressed to Mr. N. B. Goldstein, Boston Store, signed "H. O. Bergdahl."

13613

**Commission's Exhibits 565-A and 565-B.**

Copy of letter dated November 19, 1935, addressed to Mr. Vactor Chambers, Associated Merchandising Corporation, 1440 Broadway, New York City, typewritten signature "Fashion Originators Guild of America, Inc., Albert M. Post, Executive Director."

**Commission's Exhibit 566.**

13614

Letter on letterhead of Associated Merchandising Corporation Retail Research Association, 1440 Broadway, New York City, dated November 25, 1935, addressed to Mr. W. L. Rowse, The Boston Store, Milwaukee, Wisconsin, signed "H. O. Bergdahl."

**Commission's Exhibits 567-A, 567-B, 567-C, 567-D, and 567-E.**

567-A—Mimeographed letter dated November 27, 1935, addressed to Mr. W. L. Rowse, Boston Store, signed "H.O.B."

567-B, 567-C, 567-D and 567-E—Mimeographed pages headed "F.O.G.A. QUESTIONS AND REPLIES."

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**Commission's Exhibit 568.**

Letter, mimeographed on letterhead of Fashion Originators Guild of America, Inc., dated January 6, 1936, addressed to Boston Store, Herzfeld-Phillipson, Milwaukee, Wisconsin, signed in typewriting "Fashion Originators Guild of America, Inc.," mimeographed signature "Jack Goldston."

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**Commission's Exhibit 572.**

Letter on letterhead of Fashion Originators Guild of America, Inc., dated June 17, 1935, addressed to Mr. W. L. Rowse, Boston Store, Milwaukee, Wisconsin, signed "Fashion Originators Guild of America, Inc., J. M. Golby, Executive Secretary." 13616

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**Commission's Exhibits 573-A and 573-B.**

Typewritten pages headed "List of Members of The Fashion Originators Guild of America, Inc., From Whom Purchases Have Been Made During the Period February 1, 1935 to July 31, 1936."

13617

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**Commission's Exhibit 575.**

Photostat of page 12, The Milwaukee Journal of Wednesday, August 21, 1935, containing advertisement of Boston Store.

13618

*Statement of Exhibits.*

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**Commission's Exhibit 576.**

Photostat of page 20, The Milwaukee Journal of Thursday, September 19, 1935, containing advertisement of Boston Store.

**Commission's Exhibit 577.**

Photostat of page 5, The Milwaukee Sentinel of Saturday, October 5, 1935, containing advertisement of Boston Store.

13619

**Commission's Exhibit 578.**

Photostat of page 2, The Milwaukee Journal of Friday, October 18, 1935, containing advertisement of Boston Store.

**Commission's Exhibit 579.**

Photostat of page, from where taken not shown, numbered in upper left-hand corner "VII," Sunday, October 2, 1935, containing advertisement of Boston Store.

**Commission's Exhibit 580.**

13620

Photostat of page 8, Milwaukee Sentinel, Saturday, November 2, 1935, containing advertisement of Boston Store.

**Commission's Exhibit 581.**

Photostat of page 7, Milwaukee Sentinel, Wednesday, December 25, 1935, containing advertisement of Boston Store.

*Statement of Exhibits.*

13621

**Commission's Exhibit 582.**

Photostat of page 9, The Milwaukee Journal, Friday, December 27, 1935, containing advertisement of Boston Store.

**Commission's Exhibit 583.**

Photostat of page (number not given) of The Milwaukee Journal, Friday, January 31, 1936, containing advertisement of Boston Store.

**Commission's Exhibit 584.**

13622

Photostat of E-page 3, Milwaukee Sentinel, Sunday, March 1, 1936, containing advertisement of Boston Store.

**Commission's Exhibit 585.**

Photostat of page 21, The Milwaukee Journal, Friday, March 20, 1936, containing advertisement of Boston Store.

**Commission's Exhibit 586.**

Photostat of page 15, The Milwaukee Journal, Sunday, March 15, 1936, containing advertisement of Boston Store.

**Commission's Exhibit 587.**

13623

Pencil tabulation headed "Comparison of Units Sold February 1 to July 31, 1935-1936."

**Commission's Exhibit 588.**

Pencil tabulation headed "Comparison of Units Sold February 1 to July 31, 1935-1936."

13624

*Statement of Exhibits.***Commission's Exhibit 589.**

Copy of a letter dated August 14, 1936, addressed to M. Barney Gisnet, care of Louise Mulligan, 337 South Franklin Street, Chicago, Illinois, typewritten signature The Herzfeld-Phillipson Co., Merchandise Manager, F. C. Dillon.

**Commission's Exhibit 590.**

13625

Letter on the stationery of Louise Mulligan, Incorporated, 337 South Franklin, Chicago, dated August 15, 1936, addressed to The Herzfeld-Phillipson Company, Milwaukee, Wisconsin, attention of F. C. Dillon, and signed "Louise Mulligan, Inc., Barney Gisnet."

**Commission's Exhibit 591.**

Report headed "Louise Mulligan Dress Sales, Department 374," dated August 22, 1936, giving the price lines and sales for the period August to December, 1935, as compared with January to March, 1936, and the totals.

**Commission's Exhibit 592.**

Copy of letter from R. H. Bjorkman to J. M. Golby, dated December 28, 1932.

13626

**Commission's Exhibit 593.**

Copy of letter from R. H. Bjorkman to J. M. Golby, dated December 30, 1932.

**Commission's Exhibit 594.**

Copy of letter from J. M. Golby to R. H. Bjorkman, dated January 2, 1933, on letterhead of Fashion Originators Guild of America, Inc.

*Statement of Exhibits.*

13627

**Commission's Exhibit 595.**

Telegram to Fashion Originators Guild of America, Inc., from R. H. Bjorkman re sending minutes of Retail Guilds, dated January 7, 1933.

**Commission's Exhibit 597.**

Letter dated December 24, 1932, from J. M. Golby to R. H. Bjorkman on letterhead of Fashion Originators Guild of America, Inc.

13628

**Commission's Exhibits 598-A to 598-H.**

Letter from J. M. Golby to R. H. Bjorkman with Uptown Retail Guild, minutes enclosed.

**Commission's Exhibit 599-A.**

Letter from Perry Snyder of Powers Mercantile Co. to R. H. Bjorkman, dated January 17, 1933.

**Commission's Exhibit 600.**

Certificate of Organization of Minneapolis Retail Fashion Guild. 13629

**Commission's Exhibits 601-A and 601-B.**

Declaration of Co-operation between Minneapolis Fashion Guild and Fashion Originators Guild of America, Inc.

13630

*Statement of Exhibits.***Commission's Exhibit 602.**

Letter from members of Minneapolis Ready to Wear Association to Fashion Originators Guild of America, Inc., dated February 1, 1933.

**Commission's Exhibit 603.**

Copy letter from R. H. Bjorkman to J. M. Golby of Fashion Originators Guild of America, Inc., dated February 1, 1933.

**Commission's Exhibit 604.**

13631

Letter from D. J. Larson of Dayton Company to R. H. Bjorkman, dated January 25, 1933.

**Commission's Exhibit 605.**

Letter from Dayton Company unsigned to Fashion Originators Guild of America, Inc., dated January 24, 1933.

**Commission's Exhibit 606.**

13632

Letter from J. M. Golby to R. H. Bjorkman on letterhead of Fashion Originators Guild of America, Inc., dated February 6, 1933.

**Commission's Exhibits 607-A and 607-B.**

Form letter from Fashion Originators Guild of America, Inc. (Rentner), to R. H. Bjorkman, dated February 2, 1933.

*Statement of Exhibits.*

13633

**Commission's Exhibits 608-A and 608-B.**

Form letter from Fashion Originators Guild of America, Inc. (Rentner), to R. H. Bjorkman, dated February 4, 1933.

**Commission's Exhibit 609.**

Letter from J. M. Golby to R. H. Bjorkman, dated February 7, 1933.

**Commission's Exhibit 610.**

Telegram from Fashion Originators Guild of America, Inc., to R. H. Bjorkman, dated March 1, 1933. 13634

**Commission's Exhibit 611.**

Copy letter from R. H. Bjorkman to Fashion Originators Guild of America, Inc., dated June 21, 1933.

**Commission's Exhibit 612.**

Letter from R. H. Bjorkman to J. M. Golby, dated July 29, 1933.

**Commission's Exhibits 613-A and 613-B.**

Letter from J. M. Golby to R. H. Bjorkman, dated August 3, 1933. 13635

**Commission's Exhibit 614.**

Copy letter from J. M. Golby to R. H. Bjorkman, dated August 4, 1933.

13636

*Statement of Exhibits.***Commission's Exhibits 615-A and 615-B.**

Copy letter from R. H. Bjorkman to J. M. Golby, dated August 7, 1933.

**Commission's Exhibit 616.**

Copy letter from R. H. Bjorkman to J. M. Golby, dated August 9, 1933.

**Commission's Exhibit 617.**

13637 Letter from J. M. Golby to R. H. Bjorkman, dated August 9, 1933, in reply to Exhibit 616.

**Commission's Exhibit 618.**

Letter from Louis Mallas, Chairman Junior Miss Division of Fashion Originators Guild of America, Inc., to R. H. Bjorkman, dated October 25, 1933.

**Commission's Exhibit 619.**

Telegram from J. M. Golby of Uptown Retail Guild Annex of Fashion Originators Guild of America, Inc., to R. H. Bjorkman, dated November 13, 1933.

13638

**Commission's Exhibit 620.**

Copy letter from R. H. Bjorkman to J. M. Golby, dated November 14, 1933.

**Commission's Exhibits 621-A to 621-G.**

Letter from J. M. Golby to R. H. Bjorkman, dated January 5, 1934, with resolutions of Fashion Originators Guild of America, Inc., on consignment selling and loan of merchandise, fashion shows, and cancellations enclosed.

*Statement of Exhibits.*

13639

**Commission's Exhibits 622-A to 622-C.**

Letter from J. M. Golby to R. H. Bjorkman, dated February 2, 1934, with copies of Uptown Retail Guild minutes enclosed.

**Commission's Exhibit 624.**

Copy Resolution of Uptown Retail Guild, dated February 17, 1934.

**Commission's Exhibits 625-A and 625-B.**

Copy letter from R. H. Bjorkman to J. M. Golby of Fashion Originators Guild of America, Inc., dated June 5, 1934. 13640

**Commission's Exhibit 626.**

Letter from J. M. Golby to R. H. Bjorkman, dated June 7, 1934.

**Commission's Exhibits 627-B and 627-C.**

Letter from J. M. Golby to R. H. Bjorkman, dated June 7, 1934.

**Commission's Exhibit 627-D.**

List of Names of Manufacturers submitted to Uptown Retail Guild. 13641

**Commission's Exhibits 627-E and 627-F.**

Minutes of Meeting of Board of Governors of Uptown Retail Guild, held June 5, 1934.

13642

*Statement of Exhibits.***Commission's Exhibit 628.**

Letter from Fashion Originators Guild of America, Inc., Miss Herschman to R. H. Bjorkman, dated June 11, 1934.

**Commission's Exhibit 629.**

Letter from R. H. Bjorkman to Fashion Originators Guild of America, Inc., dated June 14, 1934.

**Commission's Exhibits 630-A and 630-B.**

13643

Copy letter from Chairman of Minneapolis Fashion Guild to J. M. Golby, dated June 23, 1934.

**Commission's Exhibit 631.**

Letter from J. M. Golby to R. H. Bjorkman, dated June 25, 1934.

**Commission's Exhibit 632.**

Letter from Sam Dietsch, Chairman, Coat Division of Fashion Originators Guild of America, Inc., to R. H. Bjorkman, dated June 29, 1934, on letterhead of Fashion Originators Guild of America, Inc.

13644

**Commission's Exhibits 633-A and 633-B.**

Copy of letter from R. H. Bjorkman to J. M. Golby, dated July 31, 1934.

**Commission's Exhibit 634.**

Letter from J. M. Golby of Fashion Originators Guild of America, Inc., to R. H. Bjorkman, dated July 27, 1934.

*Statement of Exhibits.*

13645

**Commission's Exhibit 635.**

Fashion Show Resolutions, dated July 31, 1934.

**Commission's Exhibit 636.**

Telegram from Fashion Originators Guild of America, Inc., to R. H. Bjorkman, dated August 6, 1934.

**Commission's Exhibit 637.**

Letter from J. M. Golby of Fashion Originators Guild of America, Inc., to R. H. Bjorkman, dated August 16, 1934.

13646

**Commission's Exhibits 638-A and 638-B.**

Copy of letter from R. H. Bjorkman to J. M. Golby, dated August 18, 1934.

**Commission's Exhibit 639.**

Letter from J. M. Golby of Fashion Originators Guild of America, Inc., to R. H. Bjorkman, dated August 21, 1934.

**Commission's Exhibit 640.**

Copy of letter from R. H. Bjorkman to J. M. Golby, dated August 23, 1934.

13647

**Commission's Exhibit 641.**

Letter from J. M. Golby of Fashion Originators Guild of America, Inc., to R. H. Bjorkman, dated August 27, 1934.

13648

*Statement of Exhibits.***Commission's Exhibit 642.**

Letter from J. M. Golby of Fashion Originators Guild of America, Inc., to R. H. Bjorkman, dated August 27, 1934.

**Commission's Exhibit 643.**

Copy of letter from R. H. Bjorkman to J. M. Golby, dated November 12, 1934.

**Commission's Exhibit 644.**

13649

Letter from J. M. Golby of Fashion Originators Guild of America, Inc., to R. H. Bjorkman, dated January 31, 1935.

**Commission's Exhibit 645.**

Letter from J. M. Golby of Fashion Originators Guild of America, Inc., to R. H. Bjorkman, dated February 1, 1935.

**Commission's Exhibits 647-A and 647-B.**

Letter from J. M. Golby of Fashion Originators Guild of America, Inc. to R. H. Bjorkman, dated February 15, 1935.

13650

**Commission's Exhibit 650.**

Form letter from J. M. Golby to R. H. Bjorkman re appointment of shopper, dated February 28, 1935.

**Commission's Exhibits 653-A to 653-C.**

Letter to J. M. Golby from R. H. Bjorkman on letterhead of Roy H. Bjorkman, Inc., dated March 21, 1935.

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**Commission's Exhibits 654-A to 654-C.**

Letter to J. M. Golby of Fashion Originators Guild of America, Inc., to R. H. Bjorkman, dated March 26, 1935.

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**Commission's Exhibit 657.**

Copy of letter from R. H. Bjorkman to J. M. Golby, dated April 18, 1935.

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**Commission's Exhibit 658.**

Copy of letter from R. H. Bjorkman to J. M. Golby, dated April 16, 1935.

13652

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**Commission's Exhibit 660.**

Letter from J. M. Golby of Fashion Originators Guild of America, Inc., to R. H. Bjorkman, dated April 22, 1935.

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**Commission's Exhibit 665.**

Letter from J. M. Golby of Fashion Originators Guild of America, Inc., to R. H. Bjorkman, on letterhead of Fashion Originators Guild of America, Inc., dated June 22, 1935.

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**Commission's Exhibits 666-A and 666-B.**

13653

Copy of telegram from A. M. Post of Fashion Originators Guild of America, Inc., to R. H. Bjorkman, dated June 27, 1935.

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**Commission's Exhibit 667.**

Copy of letter from J. M. Golby of Fashion Originators Guild of America, Inc., to R. H. Bjorkman, dated June 27, 1935.

13654

*Statement of Exhibits.***Commission's Exhibit 669.**

Copy of telegram from R. H. Bjorkman to A. M. Post,  
dated June 28, 1935.

**Commission's Exhibits 672-A to 672-D.**

Proposed Declaration of Co-operation in Anti-Piracy  
between Minneapolis Fashion Guild and Fashion Origin-  
ators Guild of America, Inc., dated      day of  
1935.

13655

**Commission's Exhibits 674-A and 674-B.**

Letter from J. M. Golby of Fashion Originators Guild  
of America, Inc., to R. H. Bjorkman, dated July 3, 1935.

**Commission's Exhibit 675.**

Copy of letter from R. H. Bjorkman to J. M. Golby,  
dated July 6, 1935.

**Commission's Exhibit 676.**

Letter from J. M. Golby of Fashion Originators Guild  
of America, Inc., to R. H. Bjorkman, dated July 11, 1935.

13656

**Commission's Exhibit 677.**

Letter from A. M. Post to R. H. Bjorkman on letterhead  
of Fashion Originators Guild of America, Inc., dated July  
12, 1935.

**Commission's Exhibits 678-A and 678-B.**

Letter from A. M. Post to R. H. Bjorkman on stationery  
of Fashion Originators Guild of America, Inc., dated July  
19, 1935.

*Statement of Exhibits.*

13657

**Commission's Exhibits 682-A and 682-B.**

Letter from A. M. Post to R. H. Bjorkman on letterhead of Fashion Originators Guild of America, Inc., dated September 12, 1935.

**Commission's Exhibit 683.**

List of Minneapolis stores signed with Fashion Originators Guild of America, Inc., dated September 12, 1935.

**Commission's Exhibits 685-A and 685-B.**

Registered letter from J. M. Golby to R. H. Bjorkman on stationery of Fashion Originators Guild of America, Inc., dated September 16, 1935. 13658

**Commission's Exhibits 686-A and 686-B.**

Copy of registered letter from R. H. Bjorkman to A. M. Post, dated September 18, 1935.

**Commission's Exhibit 687.**

Letter from J. M. Golby to R. H. Bjorkman, dated September 21, 1935.

**Commission's Exhibit 688.**

13659

Letter from J. Jesse Hyman to R. H. Bjorkman on letterhead of Atkinsons of Minneapolis, dated September 24, 1935.

**Commission's Exhibit 689.**

Copy of letter from J. Jesse Hyman to J. M. Golby, dated September 27, 1935.

13660

*Statement of Exhibits.***Commission's Exhibit 690.**

Letter from J. M. Golby to R. H. Bjorkman on stationery of Fashion Originators Guild of America, Inc., dated October 21, 1935.

**Commission's Exhibit 691.**

Copy of letter from R. H. Bjorkman to A. M. Post, dated October 29, 1935.

**Commission's Exhibit 692.**

13661

Copy of letter from A. M. Post to Virginia C. McDonald, dated May 16, 1936.

**Commission's Exhibit 693.**

Letter from A. M. Post to R. H. Bjorkman, dated May 16, 1936.

**Commission's Exhibits 694-A and 694-B.**

Copy of letter from R. H. Bjorkman to A. M. Post, dated June 2, 1936.

**Commission's Exhibits 695-A to 695-E.**

13662

Signed Agreement of Minneapolis Fashion Guild with Fashion Originators Guild of America, Inc., dated August 26, 1935.

**Commission's Exhibit 696.**

Letter from P. J. Reilly of Associated Merchandising Corporation to The Dayton Co., dated June 21, 1933, enclosing Guild Agreement.

*Statement of Exhibits.*

13663

**Commission's Exhibit 697.**

Resolution of American Merchandising Corporation  
Garment Merchandising Managers concerning Anti-Piracy  
Agreement with Fashion Originators Guild of America,  
Inc.

**Commission's Exhibit 701.**

Copy of letter from C. J. Larson of The Dayton Co.  
to Fashion Originators Guild of America, Inc., dated July  
1, 1933.

**Commission's Exhibits 702-A and 702-B.**

13664

Letter from Fashion Originators Guild of America, Inc.,  
to Phillips of The Dayton Co., dated August 3, 1933  
(same as Respondents' Exhibit 120).

**Commission's Exhibits 703-A and 703-B.**

Proposed Agreement between Fashion Originators  
Guild of America, Inc., and Minneapolis Guild of Fashion  
Retailers.

**Commission's Exhibits 705-A, 705-B and 705-C.**

Letter from A. M. Post to D. Donovan of The Dayton  
Co., dated May 3, 1935, on stationery of Fashion Origin-  
ators Guild of America, Inc.

13665

**Commission's Exhibit 706.**

Copy of letter from D. Donovan to A. M. Post, dated  
May 8, 1935.

13666

*Statement of Exhibits.*

**Commission's Exhibit 707.**

Telegram from D. Donovan to C. J. Larsen of The Dayton Co., dated May 13, 1935.

**Commission's Exhibit 708.**

Letter from Maurice Rentner to The Dayton Co., attention of Miss Johnstone, dated February 21, 1936, on letter head of Maurice Rentner, Inc.

**Commission's Exhibit 709.**

13667

Letter from Milton Altmark, Inc., to The Dayton Co., dated February 18, 1936.

**Commission's Exhibit 710.**

Letter from N. E. Friedland of Associated Merchandising Corporation to Miss N. Johnstone of The Dayton Co., dated February 18, 1936.

**Commission's Exhibit 711.**

Letter from Fred A. Block, Inc., to The Dayton Co., dated August 27, 1936.

13668

**Commission's Exhibit 712.**

Letter from Grace Ashley to Miss F. McKenney of The Dayton Co., dated August 29, 1936.

**Commission's Exhibit 713.**

Junior Dresses (Subdeb Dept.), Spring, 1935-1936-  
Comparison of Unit Sales (Dept. 371) of The Dayton Co.

*Statement of Exhibits.*

13669

**Commission's Exhibit 714.**

Record of estimated loss in traveling expense and time,  
Spring, 1936.

**Commission's Exhibit 715.**

Booklet, "Quality Street," Fall, 1935, with imprint of  
The Dayton Co.

**Commission's Exhibit 716.**

Ad, Minneapolis Journal, dated July 16, 1935, of The  
Dayton Co.

13670

**Commission's Exhibit 717.**

Ad, Minneapolis Journal, dated August 2, 1935, of The  
Dayton Co.

**Commission's Exhibit 718.**

Ad, Minneapolis Journal, dated August 21, 1935, of  
The Dayton Co.

**Commission's Exhibit 719.**

Ad, Minneapolis Journal, dated August 30, 1935, of  
The Dayton Co.

13671

**Commission's Exhibit 720.**

Ad, Minneapolis Journal, dated August 23, 1935, of  
The Dayton Co.

13672

*Statement of Exhibits.*

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**Commission's Exhibit 724.**

Ad, Minneapolis Tribune, dated October 3, 1935, of The Dayton Co.

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**Commission's Exhibit 725.**

Ad, Minneapolis Journal, dated October 18, 1935, of The Dayton Co.

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**Commission's Exhibit 726.**

13673 Ad, Minneapolis Tribune, dated October 22, 1935, of The Dayton Co.

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**Commission's Exhibit 727.**

Ad, Minneapolis Journal, dated November 8, 1935, of The Dayton Co.

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**Commission's Exhibit 728.**

Ad, Minneapolis Journal, dated November 22, 1935, of The Dayton Co.

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**Commission's Exhibit 729.**

13674 Ad, Minneapolis Journal, dated December 11, 1935, of The Dayton Co.

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**Commission's Exhibit 730.**

Ad, Minneapolis Journal, dated December 19, 1935, of The Dayton Co.

**Commission's Exhibit 731.**

Ad, Minneapolis Tribune, dated December 25, 1935, of  
The Dayton Co.

**Commission's Exhibit 732.**

Ad, Minneapolis Tribune, dated December 23, 1935, of  
The Dayton Co.

**Commission's Exhibit 733.**

Ad, Minneapolis Journal, dated February 26, 1936, of  
The Dayton Co.

13676

**Commission's Exhibit 734.**

Article appearing on page 6 of August, 1936 issue of  
"Golfer & Sportsman," by Virginia McDonald, entitled  
"Fashions for Fashionables."

**Commission's Exhibit 735.**

Letter on letterhead of Fashion Originators Guild of  
America, Inc., addressed to Frances Malsh, 5120 Harper  
Avenue, Chicago, Illinois, and signed "Fashion Originators  
Guild of America, Inc., by J. M. Golby, Executive Secre-  
tary," and dated August 20, 1934.

13677

**Commission's Exhibit 736.**

Copy of order, headed "David Crystal, Incorporated,  
530 Seventh Avenue, New York," dated December 12,  
1934, and reads: "Make for Frances Malsh, 5120 Harper  
Avenue, Chicago," and is signed by Frances Malsh.

13678

*Statement of Exhibits.***Commission's Exhibit 737.**

Letter on stationery of David Crystal, Inc., 498 Seventh Avenue, New York, dated December 19, 1934, addressed to Frances Malsh, 5120 Harper Avenue, Chicago, Illinois, signed "David Crystal, Inc.," and initialed "FN:FR."

**Commission's Exhibit 738.**

Letter on stationery of David Crystal, Inc., 498 Seventh Avenue, New York, dated December 27, 1934, addressed to Frances Malsh, 5120 Harper Avenue, Chicago, Illinois, signed "David Crystal, Inc.," and initialed "LDL:FR"

13679

**Commission's Exhibit 739.**

Copy of an order on stationery of Feigenbaum & Adelson, Inc., Penthouse, 530 Seventh Avenue, New York, dated August 1, 1935, reading, "Ship to Frances Malsh, 5120 Harper Avenue, Chicago, Illinois."

**Commission's Exhibit 740.**

Letter on stationery of Feigenbaum & Adelson, Inc., 530 Seventh Avenue, New York City, dated August 2, 1935, addressed to Frances Malsh, 5120 Harper Avenue, Chicago, Illinois; signed, "Feigenbaum and Adelson, Inc.," and initialed "ED."

13690

**Commission's Exhibits 741-A and 741-B.**

Two-page letter on the letterhead of Frances Malsh, The Sadonia, 5120 Harper Avenue, Chicago, dated August 1, 1935, addressed to Fashion Originators Guild of America, Inc., New York, and signed "(Mrs.) Frances Malsh."

*Statement of Exhibits.*

13681

**Commission's Exhibits 742-A and 742-B.**

Two-page letter on the letterhead of Fashion Originators Guild of America, Inc., 512 Seventh Avenue, New York City, dated August 12, 1935, addressed to Mrs. Frances Malsh, The Sadonia, 5120 Harper Avenue, Chicago, Ill., signed "Fashion Originators Guild of America, Inc., J. M. Gofby, Executive Secretary."

**Commission's Exhibit 743.**

Letter on the letterhead of Sport-Craft, Inc., 498 Seventh Avenue, New York, dated January 15, 1936, addressed to Florence Hertz and Hazel Lang, 1113 Hyde Park Boulevard, Chicago, Illinois, signed (in typewriting) "Sport-Craft, Inc.," and initialed "HR:LK," with printing, "Harry Rubin."

13682

**Commission's Exhibits 744-A to 744-H.**

By-laws of Michigan Avenue Guild of Chicago (adopted March 2, 1933; amended November 7, 1933, October 24, 1934, and December 17, 1935).

**Commission's Exhibit 745.**

Headed, "Michigan Avenue Guild of Chicago, Inc., No. 669 North Michigan Avenue. Whitehall 6500," being list of officers, board of directors, advisory board, executive committee, publicity and advertising, arbitration committee, wholesale relationship committee, State Street contact committee.

13683

**Commission's Exhibits 746-A and 746-B.**

Two-page document headed, "Rules and Regulations of the Michigan Avenue Guild of Chicago, Inc., in force as of January 2, 1936."

13684

*Statement of Exhibits.***Commission's Exhibits 747-A to 747-E.**

Five-page document headed, "Minutes of the Meeting of the Michigan Avenue Guild of Chicago, held December 17, 1932," signed (in typewriting) "L. R. Pearson, Temporary Secretary," and "Approved: Harry H. Blum" and others, "constituting all of the members."

**Commission's Exhibits 748-A and 748-B.**

13685

Two-page document headed, "Minutes of the Meeting of the Michigan Avenue Guild of Chicago, held December 23rd, 1932," signed (in typewriting) "L. R. Pearson, Secretary. Approved: Harry H. Blum" and others, "constituting all of the members."

**Commission's Exhibits 749-A and 749-B.**

Two-page document entitled, "Minutes of Meeting of the Michigan Avenue Guild of Chicago, held December 30, 1932," signed (in typewriting) "A. H. Marshall, Temporary Secretary. Approved: Harry H. Blum" and others, "constituting all of the members."

**Commission's Exhibits 750-A and 750-B.**

13686

Two-page document entitled, "Minutes of Meeting of the Michigan Avenue Guild of Chicago, held January 5, 1933," signed (in typewriting) "L. R. Pearson, Secretary. Approved: Clarence A. Powell" and others, "constituting all of the members."

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**Commission's Exhibits 751-A and 751-B.**

Two-page document entitled, "Minutes of Meeting of the Michigan Avenue Guild of Chicago, held February 3, 1933," signed (in typewriting) "L. R. Pearson, Secretary. Approved: Edward Blum" and others, "constituting all of the members."

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**Commission's Exhibits 752-A and 752-B.**

Two-page document entitled, "Minutes of the Meeting of the Michigan Avenue Guild of Chicago, held February 10, 1933," signed (in typewriting) "L. R. Pearson, Secretary. Approved: C. Powell" and others.

13688

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**Commission's Exhibits 753-A to 753-C.**

Three-page document entitled, "Minutes of Meeting of the Michigan Avenue Guild of Chicago, held February 21, 1933," signed (in typewriting) "L. R. Pearson, Secretary."

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**Commission's Exhibits 754-A, 754-B and 754-C.**

Three-page document entitled, "Minutes of Meeting of the Michigan Avenue Guild of Chicago, held March 2, 1932," signed (in typewriting) "L. R. Pearson, Secretary."

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**Commission's Exhibit 755.**

13689

One-page document headed, "Minutes of Meeting of the Michigan Avenue Guild of Chicago, held March 16, 1933," signed (in typewriting) "L. R. Pearson, Secretary."

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**Commission's Exhibits 756-A and 756-B.**

Two-page document entitled, "Minutes of Meeting of the Michigan Avenue Guild of Chicago, held April 1st, 1933," signed (in typewriting) "L. R. Pearson, Secretary."

13690

*Statement of Exhibits.*

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**Commission's Exhibits 757-A and 757-B.**

Two-page document entitled "Minutes of Meeting of the Michigan Avenue Guild of Chicago, held April 29, 1933," signed (in typewriting) "L. R. Pearson, Secretary."

**Commission's Exhibits 758-A and 758-B.**

Two-page document entitled, "Minutes of Meeting of Members of the Michigan Avenue Guild of Chicago, held May 23, 1933, at 8:00 P. M., at the Drake Hotel, Chicago, Illinois," signed (in typewriting) "L. R. Pearson, Secretary."

13691

**Commission's Exhibits 759-A and 759-B.**

Two-page document entitled, "Minutes of Meeting of Members and Prospective Members of the Michigan Avenue Guild of Chicago, held June 24, 1933," signed (in typewriting) "L. R. Pearson, Secretary."

**Commission's Exhibit 760.**

One-page document entitled, "Minutes of Meeting of Directors of Michigan Avenue Guild of Chicago, held July 6, 1933," signed (in typewriting) "L. R. Pearson, Secretary."

13692

**Commission's Exhibits 761-A and 761-B.**

Two-page document entitled, "Minutes of Meeting of Directors of Michigan Avenue Guild of Chicago, held August 24, 1933," signed (in typewriting) "L. R. Pearson, Secretary."

*Statement of Exhibits.*

13693

**Commission's Exhibits 762-A and 762-B.**

Two-page document entitled, "Minutes of Meeting of the Directors of the Michigan Avenue Guild of Chicago, held September 12, 1933," signed (in typewriting) "L. R. Pearson, Secretary."

**Commission's Exhibits 763-A, 763-B and 763-C.**

Three-page document, entitled, "Minutes of Meeting of the Directors of the Michigan Avenue Guild of Chicago, held October 2, 1933," signed (in typewriting) "L. R. Pearson, Secretary."

13694

**Commission's Exhibits 764-A, 764-B and 764-C.**

Three-page document entitled, "Minutes of Meeting of the Directors of the Michigan Avenue Guild of Chicago, held October 11, 1933," signed (in typewriting) "L. R. Pearson, Secretary."

**Commission's Exhibits 765-A to 765-B.**

Four-page document entitled, "Minutes of Meeting of the Directors of the Michigan Avenue Guild of Chicago, held October 21, 1933," signed (in typewriting) "L. R. Pearson, Secretary."

13695

**Commission's Exhibits 766-A to 766-E.**

Five-page document entitled, "Minutes of Meeting of Members of Michigan Avenue Guild of Chicago, held October 23, 1933," signed (in typewriting) "L. R. Pearson, Secretary."

13696

*Statement of Exhibits.***Commission's Exhibits 767-A to 767-D.**

Four-page document entitled, "Minutes of Meeting of Directors of Michigan Avenue Guild of Chicago, held November 7, 1933," signed (in typewriting) "L. R. Pearson, Secretary."

**Commission's Exhibits 768-A and 768-B.**

Two-page document entitled, "Minutes of Meeting of the Directors of Michigan Avenue Guild of Chicago, held November 14, 1933," signed (in typewriting) "L. R. Pearson, Secretary."

13697

**Commission's Exhibits 769-A to 769-C.**

Three-page document, entitled "Minutes of Meeting of Directors of Michigan Avenue Guild of Chicago, held November 28, 1933," signed (in typewriting) "L. R. Pearson, Secretary."

**Commission's Exhibits 770-A to 770-C.**

Three-page document entitled, "Minutes of Meeting of Directors of Michigan Avenue Guild of Chicago, held December 5, 1933," signed (in typewriting) "L. R. Pearson, Secretary."

13698

**Commission's Exhibit 771.**

One-page document entitled, "Minutes of the Meeting of the Executive Committee of the Michigan Avenue Guild of Chicago," signed (in typewriting) "George Gleason, Chairman."

**Commission's Exhibits 772-A to 772-C.**

Three-page document entitled, "Minutes of Meeting of the Michigan Avenue Guild of Chicago, held December 27, 1933," signed (in typewriting) "L. R. Pearson, Secretary."

**Commission's Exhibits 773-A to 773-D.**

Four-page document entitled, "Minutes of Annual Meeting of the Michigan Avenue Guild of Chicago, held December 29, 1933," signed (in typewriting) "L. R. Pearson, Secretary."

**Commission's Exhibits 774-A to 774-B.**

13700

Two-page document entitled, "President's Annual Report, read at General Meeting—December 29, 1933," signed (in typewriting) "Clarence Powell, President."

**Commission's Exhibits 775-A to 775-E.**

Five-page document, entitled, "Minutes of Directors' Meeting of the Michigan Avenue Guild of Chicago, held December 29, 1933," signed (in typewriting) "Edw. A. Fletcher, Secretary."

**Commission's Exhibits 776-A to 776-D.**

13701

Four-page document entitled, "Minutes of Meeting of Board of Directors of Michigan Avenue Guild of Chicago, held at the office of George M. Gleason, 840 North Michigan Avenue, Chicago, Illinois, on February 20, 1934, at 9:30 in the morning," signed (in typewriting) "Edw. A. Fletcher, Secretary."

13702

*Statement of Exhibits.***Commission's Exhibits 777-A and 777-B.**

Two-page document entitled, "Minutes of Special Meeting of Board of Directors of Michigan Avenue Guild of Chicago, held February 28th, 1934," signed (in typewriting) "Edward A. Fletcher, Secretary."

**Commission's Exhibits 778-A, 778-B and 778-C.**

13703

Three-page document entitled, "Minutes of Special Meeting of Board of Directors and Advisory Board of the Michigan Avenue Guild of Chicago, held March 3rd, 1934, at 9.30 A. M.," signed (in typewriting) "Edward A. Fletcher, Secretary."

**Commission's Exhibits 779-A to 779-C.**

Three-page document entitled, "Minutes of Meeting of Board of Directors and Advisory Board of Michigan Avenue Guild of Chicago, held at the office of Mr. George M. Gleason, 840 North Michigan Avenue, Chicago, Illinois, on March 22nd, 1934, at 7:00 P. M.," signed (in typewriting) "Edw. A. Fletcher, Secretary."

**Commission's Exhibits 780-A and 780-B.**

13704

Two page document entitled, "Minutes of General Meeting of all Members of the Michigan Avenue Guild, held April 9th, 1934, at the Drake Hotel, Chicago," signed (in typewriting) "Edw. A. Fletcher, Secretary."

**Commission's Exhibits 781-A to 781-C.**

Minutes of Special Meeting of Executive Committee of the Michigan Avenue Guild, held April 14, 1934, at 9:00 A. M. at Mr. Gleason's office, 840 North Michigan Avenue, Chicago. Signed by Edw. A. Fletcher, Secretary. Approved by Frank L. Cole, Chairman.

*Statement of Exhibits.*

13705

**Commission's Exhibits 782-A to 782-C.**

Minutes of Special Meeting of Executive Committee, held April 20, 1934, at Mr. Gleason's office. Signed by Edward A. Fletcher, Secretary. Approved by Frank L. Cole, Chairman.

**Commission's Exhibits 783-A to 783-D.**

Minutes of Special Meeting of Executive Committee of the Michigan Avenue Guild, held April 27, 1934, at Mr. Gleason's office, 840 North Michigan Avenue. Signed by Edw. A. Fletcher, Secretary. Approved by Frank L. Cole, Chairman, Executive Committee.

13706

**Commission's Exhibits 784-A and 784-B.**

Minutes of Special Meeting of Board of Directors and Advisory Board of the Michigan Avenue Guild of Chicago, held Monday, April 30, 1934, at 10 A. M. Signed by Edw. A. Fletcher, Secretary. Approved by George M. Gleason, President.

**Commission's Exhibits 785-A to 785-C.**

Minutes of Special Meeting of Executive Committee of the Michigan Avenue Guild, held May 1, 1934, at Mr. Gleason's office. Signed by Edward A. Fletcher, Secretary. Approved by Frank L. Cole, Chairman, Executive Committee.

13707

13708

*Statement of Exhibits.***Commission's Exhibit 786-A to 786-E.**

Minutes of a Joint Meeting of the Board of Directors and the Executive Committee of the Michigan Avenue Guild, held May 7, 1934, at 10 A. M., at Mr. Gleason's office, 840 North Michigan Avenue, Chicago, Illinois. Signed by Edward A. Fletcher, Secretary. Approved by George M. Gleason, President; F. L. Cole, Chairman, Executive Committee.

**Commission's Exhibits X-786-A to X-786-C.**

13709

Minutes of Special Meeting of Board of Directors and Advisory Board of the Michigan Avenue Guild of Chicago, held May 11, 1934, at Mr. Gleason's office, 840 North Michigan Avenue. Signed by Edward A. Fletcher, Secretary. Approved by George M. Gleason, President.

**Commission's Exhibits 787-A to 787-D.**

Minutes of Meeting of Board of Directors and Advisory Board of the Michigan Avenue Guild of Chicago, held Tuesday, May 29, 1934, at 10 A. M., at Mr. Gleason's office. Signed by Edward A. Fletcher, Secretary. Approved by George M. Gleason, President.

**Commission's Exhibits 788-A to 788-D.**

13710

Minutes of a Joint Meeting of the Board of Directors and Advisory Board of the Michigan Avenue Guild of Chicago, held Thursday, June 28, 1934, at the office of Mr. George M. Gleason. Signed by Edward A. Fletcher, Secretary. Approved by George M. Gleason, President.

**Commission's Exhibits 789-A to 789-C.**

Minutes of Meeting of Executive Committee of the Michigan Avenue Guild, held July 31, 1934, at Mr. Gleason's office. Signed by Edward A. Fletcher, Secretary, and Frank L. Cole, Chairman of Executive Committee.

**Commission's Exhibits 790-A to 790-F.**

Minutes of Meeting of Board of Directors and Advisory Board of the Michigan Avenue Guild of Chicago, held August 24, 1934. Signed by Edward A. Fletcher, Secretary. Approved by George M. Gleason, President.

13712

**Commission's Exhibits 791-A and 791-B.**

Minutes of Meeting of Executive Committee of the Michigan Avenue Guild of Chicago, held August 31, 1934. Signed by Edward A. Fletcher, Secretary. Approved by Frank L. Cole, Chairman, Executive Committee.

**Commission's Exhibits 792-A and 792-B.**

Minutes of Meeting of the Executive Committee of the Michigan Avenue Guild of Chicago, held Tuesday, September 18, 1934, at 9.30 A. M. Signed by Edward A. Fletcher, Secretary. Approved by Frank L. Cole, Chairman, Executive Committee.

13713

**Commission's Exhibits 793-A and 793-B.**

Minutes of Luncheon Meeting of the Executive Committee of the Michigan Avenue Guild of Chicago, held September 24, 1934. Signed by Edward A. Fletcher, Secretary. Approved by Frank L. Cole, Chairman, Executive Committee.

13714

*Statement of Exhibits.***Commission's Exhibits 794-A to 794-C.**

Minutes of Meeting of the Executive Committee of the Michigan Avenue Guild of Chicago, held October 5, 1934. Signed by Edward A. Fletcher, Secretary. Approved by Frank L. Cole, Chairman, Executive Committee.

**Commission's Exhibits 795-A to 795-F.**

13715

Minutes of Supper Meeting of the Board of Directors of the Michigan Avenue Guild of Chicago, held at The Drake Hotel, Parol B. East Mezzanine, on Wednesday, October 24, 1934, at 6.30 P. M. Signed by Edward A. Fletcher, Secretary. Approved by George M. Gleason, President.

**Commission's Exhibits 796-A to 796-I.**

Minutes of General Meeting of the Michigan Avenue Guild of Chicago, held at The Drake Hotel on October 24, 1934, at 8.30 P. M. Signed by Edward A. Fletcher, Secretary. Approved by George M. Gleason, President.

**Commission's Exhibits 797-A to 797-E.**

13716

Minutes of Meeting of the Board of Directors and Advisory Board of the Michigan Avenue Guild of Chicago, held Wednesday, December 5, 1934. Signed by Edward A. Fletcher, Secretary. Approved by George M. Gleason, President.

**Commission's Exhibits 798-A to 798-I.**

Minutes of General Meeting of Members of the Michigan Avenue Guild held at The Drake Hotel, Friday, December 28, 1934, at 8.30 P. M. Signed by Edward A. Fletcher, Secretary. Approved by George M. Gleason, President.

**Commission's Exhibits 799-A to 799-C.**

Minutes of Annual Meeting of the Board of Directors of the Michigan Avenue Guild, held December 28, 1934. Signed by Edward A. Fletcher, Secretary. Approved by George M. Gleason, President.

**Commission's Exhibits 800-A to 800-E.**

Minutes of Meeting of Executive Committee, held on January 4, 1935. Signed by Edward A. Fletcher, Secretary. Approved by Guy L. Ederheimer, Chairman.

**Commission's Exhibits 801-A to 801-F.**

13718

Minutes of Meeting of Board of Directors and Advisory Board of the Michigan Avenue Guild, held January 29, 1935, at 9.30 A. M. Signed by Edward A. Fletcher, Secretary. Approved by George M. Gleason, Chairman.

**Commission's Exhibits 802-A to 802-D.**

Minutes of Special Meeting of the Board of Directors of the Michigan Avenue Guild of Chicago, held February 19, 1935, at Mr. Gleason's office at 9.30 in the morning. Signed by Edward A. Fletcher, Secretary. Approved by George M. Gleason, President.

**Commission's Exhibits 803-A and 803-B.**

13719

Copy of letter on the letterhead of Fashion Originators Guild of America, Inc., to Mr. George M. Gleason, Chicago, Illinois, dated February 15, 1935, signed by J. M. Golby, Executive Secretary, and containing after said signature, an enrollment blank.

13720

*Statement of Exhibits.*

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**Commission's Exhibits 804-A to 804-D.**

Minutes of Meeting of Board of Directors and Advisory Board of the Michigan Avenue Guild of Chicago, held April 8, 1935. Signed by Edward A. Fletcher, Secretary. Approved by George M. Gleason, President.

**Commission's Exhibits 805-A to 805-D.**

Minutes of Meeting of Board of Directors and Executive Meeting of the Michigan Avenue Guild of Chicago, held April 17, 1935, at Mr. Gleason's office. Signed by Edward A. Fletcher, Secretary. Approved by George M. Gleason, President.

13721

**Commission's Exhibit 806.**

Copy of Form Letter issued by the Michigan Avenue Guild of Chicago, Illinois, to all members, containing clearing sale regulations on suits, signed by Edward A. Fletcher.

**Commission's Exhibit 807.**

Copy of Form Letter issued by the Michigan Avenue Guild of Chicago, Illinois, to all members, containing spring clearance sales regulations for coats and dresses, signed by Edward A. Fletcher, Secretary.

13722

**Commission's Exhibit 808.**

Copy of Form letter issued by the Michigan Avenue Guild of Chicago, Illinois, to all members, entitled, "Important Notice Regarding 'Mail Announcements' and 'Racks' Spring Clearance Sale." Signed by Edward A. Fletcher, Secretary.

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**Commission's Exhibits 809-A to 809-G.**

Minutes of Meeting of Board of Directors, Executive Committee and Advisory Board of the Michigan Avenue Guild of Chicago, held May 3, 1935, at 9.30, at Mr. Gleason's office. Signed by Edward A. Fletcher, Secretary. Approved by George M. Gleason, President.

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**Commission's Exhibits 810-A to 810-L.**

Minutes of Meeting of Board of Directors, Executive Committee and Advisory Board of the Michigan Avenue Guild of Chicago, held Friday, May 10, 1935, at 10 A. M. Signed by Edward A. Fletcher, Secretary. Approved by George M. Gleason, President.

13724

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**Commission's Exhibits 811-A to 811-F.**

Minutes of Meeting of Board of Directors, Executive Committee and Advisory Board of the Michigan Avenue Guild of Chicago, held Friday, June 14, 1935, at 9.30 A. M. Signed by Edward A. Fletcher, Secretary. Approved by George M. Gleason, President.

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**Commission's Exhibits 812-A to 812-D.**

Minutes of Meeting of Executive Committee, June 24, 1935. Signed by Edward A. Fletcher, Secretary. Approved by Guy L. Ederheimer, Chairman, Executive Committee.

13725

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**Commission's Exhibits 813-A to 813-D.**

Minutes of Joint Meeting of Board of Directors and Executive Committee of the Michigan Avenue Guild of Chicago, held Tuesday, July 30, 1935, at Saks Fifth Avenue, 840 North Michigan Avenue, Chicago, Illinois. Signed by Edward A. Fletcher, Secretary. Approved by Guy L. Ederheimer, Chairman.

13726

*Statement of Exhibits.*

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**Commission's Exhibits 814-A to 814-E.**

Minutes of Meeting of Board of Directors and Executive Committee of the Michigan Avenue Guild of Chicago, held October 4, 1935. Signed by Edward A. Fletcher, Secretary. Approved by Guy L. Ederheimer, Chairman.

**Commission's Exhibits 815-A and 815-B.**

13727

Document entitled, "Statistics on Copied Merchandise Returned to Manufacturers who copies—During Month of September," containing a list of original manufacturers, style numbers, copyists and number of returns.

**Commission's Exhibit 816.**

Mimeographed page headed, "Michigan Avenue Guild, #840 North Michigan Avenue, Chicago, Illinois, Whitehall 6503," dated January 14, 1935, addressed "To All Members," signed "Edw. A. Fletcher, Secretary, Michigan Avenue Guild."

**Commission's Exhibit 817.**

13728

Mimeographed page headed, "Michigan Avenue Guild, #840 North Michigan Avenue, Chicago," dated January 14, 1935, addressed "To All Members," signed (in typewriting) "Michigan Avenue Guild, #840 North Michigan Avenue, Chicago."

**Commission's Exhibit 818.**

Mimeographed letter on letterhead of Michigan Avenue Guild of Chicago, 840 North Michigan Avenue, Chicago, dated February 1, 1934, addressed "Dear Member," signed (in typewriting) "Secretary, Michigan Avenue Guild."

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**Commission's Exhibit 819.**

Mimeographed letter on letterhead of Michigan Avenue Guild of Chicago, 840 North Michigan Avenue, Chicago, dated February 11, 1935, addressed "All Members," signed "Edward A. Fletcher, Secretary, Michigan Avenue Guild."

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**Commission's Exhibits 820-A and 820-B.**

Two-page mimeographed letter on letterhead of Michigan Avenue Guild of Chicago, 840 North Michigan Avenue, Chicago, dated February 19, 1935, addressed "To All Members," signed "Edw. A. Fletcher, Secretary, Michigan Avenue Guild."

13730

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**Commission's Exhibit 821.**

Mimeographed letter on letterhead of Michigan Avenue Guild of Chicago, 840 North Michigan Avenue, Chicago, dated June 15, 1935, addressed "To All Members," signed "Edw. A. Fletcher, Secretary, Michigan Avenue Guild."

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**Commission's Exhibit 822.**

Mimeographed letter on letterhead of Michigan Avenue Guild of Chicago, 840 North Michigan Avenue, Chicago, dated June 29, 1935, addressed "To All Members," signed "Michigan Avenue Guild of Chicago, Inc., Edw. A. Fletcher, Secretary" (in typewriting).

13731

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**Commission's Exhibit 823.**

Mimeographed letter on letterhead of Michigan Avenue Guild of Chicago, 840 North Michigan Avenue, Chicago, dated October 29, 1935, addressed "To All Members," signed "Edward A. Fletcher, Secretary, Michigan Avenue Guild."

13732

*Statement of Exhibits.*

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**Commission's Exhibit 824.**

Mimeographed copy of letter on letterhead of Michigan Avenue Guild of Chicago, 840 North Michigan Avenue, Chicago, dated November 4, 1935, addressed "Gentlemen," signed "Edw. A. Fletcher, Secretary, Michigan Avenue Guild."

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**Commission's Exhibit 825:**

13733

Mimeographed letter on letterhead of Michigan Avenue Guild of Chicago, 840 North Michigan Avenue, Chicago, dated November 13, 1935, addressed "To All Members," signed "Edw. A. Fletcher, Secretary."

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**Commission's Exhibit 826.**

Copy of a letter on letterhead of Michigan Avenue Guild of Chicago, 840 North Michigan Avenue, Chicago, marked "Exhibit 'A,'" dated September 10, 1935, addressed to Mr. H. W. Rieger, Secretary, State Street Council, No. 209 South State Street, Chicago, Illinois, signed (in typewriting) "Edw. A. Fletcher, Secretary, Michigan Avenue Guild."

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13734

**Commission's Exhibit 828.**

Copy of letter dated May 17, 1934, addressed to Mr. Alexander H. Marshall, c/o Messrs. Marshall & Marshall, No. 10 South LaSalle Street, Chicago, Illinois, signed (in typewriting) "Secretary, Michigan Avenue Guild."

*Statement of Exhibits.*

13735

**Commission's Exhibits 829-A to 829-J.**

Typewritten copy of Agreement entered into between the Michigan Avenue Guild of Chicago and the Fashion Originators Guild of America, Inc., under date of December 17, 1932.

**Commission's Exhibits 830-A and 830-B.**

Two-page document on the letterhead of Fashion Originators Guild of America, Inc., addressed to L. E. Klein, with reference to a copy of Style No. 330, signed by A. M. Post, Executive Director.

13736

**Commission's Exhibit 831.**

Letter on the letterhead of KLEIN'S, Peoria, Illinois, dated April 27, 1935, addressed to Fashion Originators Guild of America, Inc., signed by "Comptroller".

**Commission's Exhibits 832-A and 832-B.**

Copy of two-page letter on the letterhead of Fashion Originators Guild of America, Inc., dated April 29, 1935, addressed to KLEIN'S, Peoria, Illinois, attention of Mr. H. W. Lund, Controller, signed by J. M. Golby, Executive Secretary.

13737

**Commission's Exhibit 833.**

Declaration of Co-operation in anti-piracy between KLEIN'S and the Fashion Originators Guild of America, Inc., signed KLEIN'S by L. E. Klein.

13738

*Statement of Exhibits.*

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**Commission's Exhibit 834.**

Copy of a letter on the letterhead of Affiliated Buying Corporation, New York City, dated May 6th, 1935, addressed to Mr. Louis Klein, Klein's, Peoria, Illinois, signed by AFFILIATED BUYING CORPORATION, H. G. Flanagan.

**Commission's Exhibit 835.**

Copy of a letter on the letterhead of Klein's, Peoria, Illinois, dated May 8, 1935, addressed to Fashion Originators Guild of America, Inc., New York City, signed by "Controller".

13739

**Commission's Exhibit 836.**

Copy of a letter on the letterhead of Fashion Originators Guild of America, Inc., dated June 27, 1935, addressed to The D. W. Klein Company, Peoria, Illinois, Attention Mr. L. E. Klein, signed by J. M. Golby, Executive Secretary.

**Commission's Exhibit 837.**

13740

Copy of letter on the letterhead of AFFILIATED BUYING CORPORATION, New York City, dated July 9, 1935, addressed to Mr. L. E. Klein, Klein's, Peoria, Illinois, signed by Harry G. Flanagan.

**Commission's Exhibit 838.**

Copy of a letter on the letterhead of AFFILIATED BUYING CORPORATION, New York City, dated July 29, 1935, addressed to Mr. H. W. Lund, Klein's, Peoria, Illinois, signed by Harry G. Flanagan.

*Statement of Exhibits.*

13741

**Commission's Exhibit 839.**

Copy of a letter on the letterhead of Fashion Originators Guild of America, Inc., dated July 30, 1935, addressed to Klein's, 222 South Adams Street, Peoria, Illinois, signed by J. M. Golby, Executive Secretary.

**Commission's Exhibit 840.**

Copy of a telegram dated February 17th, 1936, addressed to A. M. Post, Executive Director, Fashion Originators Guild of America, Inc., signed by Mandel Brothers, Carson, Pirie, Scott & Company, Marshall Field & Company, Chas. A. Stevens & Company, Davis Company, The Fair, Maurice Rothschild, W. A. Weiboldt Store, Boston Store, The Hub, Sally Frocks.

13742

**Commission's Exhibit 841.**

Copy of a letter over the signature of Neil Petree, President, Retail Dry Goods Association of New York, dated February 17, 1936, addressed to Mr. A. M. Post, Fashion Originators Guild of America, Inc.

**Commission's Exhibit 842.**

Minutes of Meeting of Ladies Ready-to-Wear Guild of Baltimore, dated September 11, 1933.

13743

**Commission's Exhibits 843-A to 843-G.**

Agreement of Ladies Ready-to-Wear Guild of Baltimore and Fashion Originators Guild of America, Inc., dated September 27, 1933.

13744

*Statement of Exhibits.***Commission's Exhibit 844.**

Minutes of Meeting of Ladies Ready-to-Wear Guild of Baltimore, dated September 18, 1933.

**Commission's Exhibits 845-A and 845-B.**

Minutes of Board of Control of Ladies Ready-to-Wear Guild of Baltimore, dated November 17, 1933.

**Commission's Exhibits 846-A to 846-C.**

13745 Minutes of Board of Control of Ladies Ready-to-Wear Guild of Baltimore, dated January 25, 1934.

**Commission's Exhibits 847-A to 847-D.**

Minutes of Board of Control of Ladies Ready-to-Wear Guild of Baltimore, dated April 9, 1934.

**Commission's Exhibits 848-A and 848-B.**

Minutes of Board of Control of Ladies Ready-to-Wear Guild of Baltimore, dated June 16, 1934.

**Commission's Exhibits 849-A and 849-B.**

13746 Minutes of Membership of Ladies Ready-to-Wear Guild of Baltimore, dated February 25, 1935.

**Commission's Exhibits 850-A to 850-C.**

Minutes of Meeting of Board of Control of Ladies Ready-to-Wear Guild of Baltimore, dated August 5, 1935.

**Commission's Exhibits 851-A to 851-C.**

By-Laws, Rules, Regulations and Agreements of Ladies Ready-to-Wear Guild of Baltimore.

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**Commission's Exhibits 852-A to 852-G.**

Minutes of Membership Meeting, dated September 30, 1935.

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**Commission's Exhibits 853-A and 853-B.**

Letter dated November 15, 1933, from J. M. Golby of Fashion Originators Guild of America, Inc., to Chas. E. Hutzler of Hutzler Bros. & Co.

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**Commission's Exhibit 854.**

Letter dated January 20, 1934, from J. M. Golby of Fashion Originators Guild of America, Inc., to C. F. Roycroft of Ladies Ready-to-Wear Guild of Baltimore. 13748

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**Commission's Exhibits 855-A and 855-B.**

Form letter signed Coat & Suit Division of Fashion Originators Guild of America, Inc., dated March 29, 1934.

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**Commission's Exhibits 856-A and 856-B.**

Letter dated February 15, 1935, from J. M. Golby to Maison Annette.

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**Commission's Exhibit 857-A.**

13749

Copy of letter dated October 12, 1935, from Roycroft to Baltimore Guild.

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**Commission's Exhibit 857-B.**

Copy of letter from Roycroft to A. M. Post, dated October 14, 1935.

13750

*Statement of Exhibits.***Commission's Exhibits 858-A and 858-B.**

Minutes dated October 12, 1935, of Ladies Ready-to-Wear Guild of Baltimore.

**Commission's Exhibits 859-A to 859-H.**

Articles of Constitution, Rules and Regulations and Agreement with Fashion Originators Guild of America, Inc., of Ladies Ready-to-Wear Guild of Baltimore.

**Commission's Exhibit 860.**

13751

List of member shares of Associated Merchandising Corp.

**Commission's Exhibits 861-A and 861-B.**

Letter from Maurice Rentner on letterhead of Maurice Rentner, Inc., to B. Forman, dated December 6, 1932.

**Commission's Exhibit 862.**

Copy of letter, H. I. Kleinhaus, Association of Buying Offices, Inc., sent to M. Rentner, dated March 30, 1935.

**Commission's Exhibit 863.**

13752

Copy of letter, H. I. Kleinhaus, Association of Buying Offices, Inc., sent to Mr. Rentner, dated April 5, 1935.

**Commission's Exhibit 864.**

Circular letter entitled "Developments in Fashion Originators Guild of America, Inc.," by H. O. Bergdahl, to Associated Merchandising Corp. Managers, dated April 10, 1935.

*Statement of Exhibits.*

13753

**Commission's Exhibit 865.**

Letter from A. M. Post to Association of Buying Offices, Inc., dated April 23, 1935, on letterhead of Fashion Originators Guild of America, Inc.

**Commission's Exhibit 866.**

Copy letter from H. I. Kleinhaus to M. Rentner, dated April 27, 1935.

**Commission's Exhibit 867.**

Minutes of Meeting, Special Committee of Association of Buying Offices, Inc., dated May 4, 1935, appointed to confer with Fashion Originators Guild of America, Inc. and Bert Reinitz. 13754

**Commission's Exhibit 869.**

Letter from Reinitz, dated May 9, 1935, to Association of Buying Offices, Inc.

**Commission's Exhibit 870.**

Proposed letter for the purpose of being mailed to all retailers by Mr. Reinitz.

**Commission's Exhibit 871.**

13755

Two-page letter from H. I. Kleinhaus to Bertram Reinitz, dated May 13, 1935.

**Commission's Exhibit 872.**

Two-page memo from H. O. Bergdahl to Garment Merchandise Managers, Associated Merchandising Corp., dated May 13, 1935.

13756

*Statement of Exhibits.*

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**Commission's Exhibit 873.**

Two-page letter from A. M. Post to Association of Buying Offices, Inc., dated June 21, 1935.

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**Commission's Exhibit 874.**

Two-page letter dated July 1, 1935, from A. M. Post to H. O. Bergdahl.

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**Commission's Exhibit 875.**

13757

Two-page letter dated July 3, 1935, from H. O. Bergdahl to Garment Merchandise Managers of Associated Merchandising Corp.

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**Commission's Exhibit 876.**

Letter to H. O. Bergdahl from A. M. Post, dated July 22, 1935.

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**Commission's Exhibit 877.**

Copy two-page letter from H. O. Bergdahl to A. M. Post, dated July 22, 1935.

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**Commission's Exhibit 878.**

13758

Three-page letter from A. M. Post to H. O. Bergdahl, dated August 2, 1935, on letterhead of Fashion Originators Guild of America, Inc.

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**Commission's Exhibit 879.**

Letter from A. M. Post to H. O. Bergdahl, dated August 12, 1935, on letterhead of Fashion Originators Guild of America, Inc.

*Statement of Exhibits.*

13759

**Commission's Exhibit 880.**

Five-page copy letter from A. M. Post to C. S. Goshen,  
c/o Bullock's Wilshire.

**Commission's Exhibit 881.**

Copy three-page letter from A. M. Post to Mr. Milburn  
The Emporium, dated August 12, 1935.

**Commission's Exhibit 882.**

Letter from A. M. Post to H. O. Bergdahl, dated August  
21, 1935, on letterhead of Fashion Originators Guild of  
America, Inc. 13760

**Commission's Exhibit 883.**

Copy letter from A. M. Post to Taylor of Strawbridge  
& Clothier, dated August 21, 1935.

**Commission's Exhibit 884.**

Letter from Chas. C. Taylor of Strawbridge & Clothier  
to A. M. Post, dated August 28, 1935.

**Commission's Exhibit 886.**

Copy telegram from John Shillito Co. to Starr-Fried-  
lander, dated March 3, 1936. 13761

**Commission's Exhibit 887.**

Copy telegram from Frank Starr-Friedlander, Inc., to  
John Shillito Co., dated May 3, 1936.

13762

*Statement of Exhibits.*

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**Commission's Exhibit 888.**

Copy telegram dated March 12, 1936, from Louise Mulligan, Inc., to John Shillito Co.

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**Commission's Exhibit 889.**

Letter from P. J. Reilly to Louis Hutzler, dated June 28, 1933.

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**Commission's Exhibit 890.**

13763 Letter from Mr. L. Hutzler to Mr. P. J. Reilly, dated June 26, 1933.

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**Commission's Exhibit 891.**

Letter from Theodore B. Griffith of L. S. Ayres & Co. to P. J. Reilly, dated June 24, 1933.

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**Commission's Exhibit 893.**

Letter from W. H. Burchfield of Jos. Horne & Co. to P. J. Reilly, dated June 24, 1933.

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**Commission's Exhibit 894.**

13764 Original Declaration of Co-operation from Hutzler Bros. to Fashion Originators Guild of America, Inc., dated June 30, 1933.

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**Commission's Exhibit 895.**

Copy Declaration of Co-operation from Stix, Baer & Fuller to Fashion Originators Guild of America, Inc., dated July 10, 1933.

*Statement of Exhibits.*

13765

**Commission's Exhibit 896.**

Letter from A. M. Post to H. O. Bergdahl, dated November 23, 1935.

**Commission's Exhibit 897.**

\*Blank form of Declaration of Co-operation between Retailer and Fashion Originators Guild of America, Inc., enclosure in letter, Exhibit 896 above.

**Commission's Exhibit 898.**

Letter from J. M. Golby of Fashion Originators Guild of America, Inc., to H. O. Bergdahl, dated August 14, 1934. 13766

**Commission's Exhibit 899.**

Newspaper clipping, Women's Wear, dated March 21, 1935.

**Commission's Exhibit 900.**

Form letter from Association of Buying Offices, Inc., to A. M. Post, dated August 3, 1935.

**Commission's Exhibit 901.**

Copy letter dated August 8, 1935, from H. O. Bergdahl to A. M. Post. 13767

**Commission's Exhibit 902.**

Copy letter dated July 25, 1935, from Floyd C. Dillon of The Emporium to H. O. Bergdahl.

13768

*Statement of Exhibits.*

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**Commission's Exhibit 903.**

Copy letter dated July 29, 1935, M. Knee of Bullocks to H. O. Bergdahl.

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**Commission's Exhibit 904.**

Two-page letter dated August 9, 1935, from A. M. Post of Fashion Originators Guild of America, Inc., to H. O. Bergdahl.

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**Commission's Exhibit 905.**

13769

Two-page letter dated September 21, 1935, from A. M. Post to F. & R. Lazarus, Inc.

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**Commission's Exhibit 906.**

Memo dated October 4, 1935, from H. O. Bergdahl to Garment Merchandise Managers of Associated Merchandising Corp., headed "Style Piracy Returns."

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**Commission's Exhibit 907.**

Letter from A. M. Post to H. O. Bergdahl, dated October 8, 1935, re returns of Associated Merchandising Corp.

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13770

**Commission's Exhibit 908.**

Letter from A. M. Post to H. O. Bergdahl, dated October 9, 1935.

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**Commission's Exhibit 909.**

List headed, \$6.75, \$7.75 and \$8.75 firms applying for membership in Fashion Originators Guild of America, Inc., dated October 4, 1935.

*Statement of Exhibits.*

13771

**Commission's Exhibit 910.**

Two-page letter from A. M. Post to H. O. Bergdahl,  
dated October 25, 1935.

**Commission's Exhibit 911.**

Letter from A. M. Post to H. O. Bergdahl, dated October  
31, 1935.

**Commission's Exhibit 912.**

Copy two-page letter to A. M. Post from H. O. Berg-  
dahl, dated November 16, 1935.

13772

**Commission's Exhibit 913.**

Two-page letter from A. M. Post to H. O. Bergdahl,  
dated November 18, November 19, 1935.

**Commission's Exhibit 914.**

Three-page letter from A. M. Post to H. O. Bergdahl,  
dated November 21, 1935.

**Commission's Exhibit 915.**

Letter from H. O. Bergdahl to A. M. Post, dated No-  
vember 18, 1935.

13773

**Commission's Exhibit 916.**

Five-page mimeographed copy letter from H. O. Berg-  
dahl to General Merchandise Managers of Associated Mer-  
chandising Corp., dated November 27, 1935.

13774

*Statement of Exhibits.*

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**Commission's Exhibit 918.**

Letter from H. O. Bergdahl to General Merchandise Managers of Associated Merchandising Corp., dated December 5, 1935.

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**Commission's Exhibit 920.**

Three-page letter from H. O. Bergdahl to Oscar Webber of J. L. Hudson Co., dated December 4, 1935.

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**Commission's Exhibit 924.**

13775 Copy letter from P. J. Reilly to A. M. Post, dated February 14, 1936.

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**Commission's Exhibit 925.**

Three-page letter from A. M. Post to Reilly, dated February 17, 1936.

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**Commission's Exhibit 926.**

Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re F. & R. Lazarus.

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**Commission's Exhibit 927.**

13776 Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re Associated Merchandising Corp.

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**Commission's Exhibit 928.**

Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re Rike-Kumler Co.

*Statement of Exhibits.*

13777

**Commission's Exhibit 929.**

Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re John Shillito Co.

**Commission's Exhibit 930.**

Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re Herzfeld-Phillipson Co.

**Commission's Exhibit 931.**

13778

Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re Bloomingdale Bros., Inc.

**Commission's Exhibit 932.**

Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re Abraham & Straus.

**Commission's Exhibit 933.**

Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re The Emporium.

13779

**Commission's Exhibit 934.**

Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re Wm. Filene's Sons Company.

13780

*Statement of Exhibits.*

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**Commission's Exhibit 935.**

Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re J. L. Hudson Co.

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**Commission's Exhibit 936.**

Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re H. C. Capwell Co.

13781

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**Commission's Exhibit 937.**

Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re The Dayton Co.

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**Commission's Exhibit 938.**

Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re Stix, Baer & Fuller.

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**Commission's Exhibit 939.**

13782 Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re Strawbridge & Clothier, Philadelphia, Pa.

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**Commission's Exhibit 940.**

Notification to Members of non-cooperation with Fashion Originators Guild of America, Inc., re Strawbridge & Clothier, Ardmore, Pa.

**Commission's Exhibit 941.**

Comparative Dollar Volume for 1935 of Fashion Originators Guild of America, Inc., and Affiliates as against entire Industry.

**Commission's Exhibit 942-A.**

Dollar Volume for 1935 of Junior Miss Members of Fashion Originators Guild of America, Inc.

**Commission's Exhibit 942-B.**

1935 Recapitulation Sheet Members, Affiliates and Protective Affiliates. 13784

**Commission's Exhibit 942-C.**

1935 Dress Volume—Protective Affiliates.

**Commission's Exhibits 942-D, 942-E, 942-F, 942-G and 942-H.**

1935—Dollar Volume of Dress Members.

**Commission's Exhibits 942-I and 942-J.**

1935—Dollar Volume of Sportswear Members.

13785

**Commission's Exhibit 943.**

Letter from A. M. Post to John Block, dated January 10, 1936.

**Commission's Exhibit 944.**

Copy letter from John Block to A. M. Post, dated January 13, 1936.

13786

*Statement of Exhibits.***Commission's Exhibit 945.**

Three-page letter from A. M. Post to John Block, dated January 15, 1936.

**Commission's Exhibit 946.**

Copy letter from John B. Swinney to Jack Goldston, dated July 3, 1936.

**Commission's Exhibit 947.**

13787 Letter from J. Goldston to J. B. Swinney, dated July 2, 1936.

**Commission's Exhibit 948.**

Letter from I. Himelhoch of Himelhoch Bros. & Co. to J. B. Swinney, dated June 29, 1936.

**Commission's Exhibit 949.**

Copy telegram from J. B. Swinney to Himelhoch Bros. & Co., dated June 29, 1936.

**Commission's Exhibit 950.**

13788 Copy letter from J. B. Swinney to Himelhoch Bros. & Co., dated June 27, 1936.

**Commission's Exhibit 951.**

Copy letter from Jack Goldston to J. B. Swinney, dated June 24, 1936.

**Commission's Exhibit 952.**

Memo from J. B. Swinney to Buyer of Junior Dresses.

*Statement of Exhibits.*

13789

**Commission's Exhibit 953.**

Telegram from Himelhoch Bros. & Co. to Specialty Stores Association, Attention of J. B. Swinney, dated June 26, 1936.

**Commission's Exhibit 954.**

Notification to Shoppers by J. Goldston, undated, re Style No. 826 of Harris Dress Co.

**Commission's Exhibit 955.**

Notification to Shoppers by J. Goldston, undated, re Style No. 829 of Harris Dress Co. 13790

**Commission's Exhibit 956.**

Seven-page list entitled "Recapitulation of Red Cards Issued," dated October 22, 1935.

**Commission's Exhibit 959.**

Letter dated November 7, 1935, from J. M. Golby to Protective Affiliates in \$6.75 \$7.75 and \$8.75 price range.

**Commission's Exhibit 960.**

Sample form of letter which manufacturers may send to retailers who have not signed Declaration of Co-operation. 13791

**Commission's Exhibit 961.**

Letter from J. M. Golby to David Rosenthal of Rosenthal & Kalman, dated November 26, 1935.

13792

*Statement of Exhibits.*

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**Commission's Exhibit 962.**

Extract of Minutes of meeting of Fashion Originators Guild of America, Inc., dated December 3, 1935, concerning classics.

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**Commission's Exhibit 964.**

Piracy Report, dated January 24, 1936, signed by J. Goldston.

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**Commission's Exhibit 965.**

13793 Sketch No. 175, dated January 30, 1936, re Style No. 415 of Rosenthal & Kalman.

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**Commission's Exhibit 966.**

Piracy Report, dated February 4, 1936, re Style No. 415 of Rosenthal & Kalman.

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**Commission's Exhibit 967.**

Additional Piracy Report dated February 4, 1936, re Style No. 415 of Rosenthal & Kalman.

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**Commission's Exhibit 968.**

13794 Advertisement of The Emporium in San Francisco Shopping News.

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**Commission's Exhibit 969.**

Piracy Report, dated February 14, 1936, re Style No. 415 of Rosenthal & Kalman.

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**Commission's Exhibit 970.**

Letter from J. Goldston to Rosenthal & Kalman, dated February 26, 1936.

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**Commission's Exhibit 971.**

Piracy Report, dated March 2, 1936 re Style No. 415 of Rosenthal & Kalman.

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**Commission's Exhibit 972.**

Form letter from J. M. Golby to Protective Affiliates, dated February 13, 1936.

13796

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**Commission's Exhibit 973.**

Telegram from A. M. Post to Rosenthal & Kalman, dated February 17, 1936.

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**Commission's Exhibit 974.**

Form letter from J. M. Golby to Members of Fashion Originators Guild of America, Inc., dated February 17, 1936.

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**Commission's Exhibit 975.**

Form letter from J. M. Golby "To Members & Affiliates," re Blue Cards, dated February 18, 1936.

13797

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**Commission's Exhibit 976.**

Form of Declaration of Co-operation.

13798

*Statement of Exhibits.***Commission's Exhibit 977.**

Two-page Agreement between Fashion Originators Guild of America, Inc., and Protective Affiliates in \$6.75, \$7.75 and \$8.75 price range.

**Commission's Exhibit 978.**

Telegram from Fashion Originators Guild of America Inc., to Rosenthal & Kalman, dated February 28, 1936.

**Commission's Exhibit 979.**

13799

Telegram from Fashion Originators Guild of America Inc., to Rosenthal & Kalman, dated March 2, 1936.

**Commission's Exhibit 980.**

Two-page letter from J. M. Golby to Rosenthal & Kalman, dated March 16, 1936.

**Commission's Exhibit 981.**

Piracy Report, dated December 24, 1935, re Style No. 410 of Rosenthal & Kalman.

**Commission's Exhibit 982.**

13800

Letter from Jack Goldston to Rosenthal & Kalman, dated February 17, 1936.

**Commission's Exhibit 983.**

Piracy Report, re Style No. 409 of Rosenthal & Kalman, dated March 2, 1936.

*Statement of Exhibits.*

13801

**Commission's Exhibit 984.**

Piracy Report, re Style No. 391 of Rosenthal & Kalman,  
dated March 2, 1936, and numbered 837.

**Commission's Exhibit 985.**

Letter from J. Goldston to Rosenthal & Kalman, dated  
February 25, 1936.

**Commission's Exhibit 986.**

Piracy Report, re Style No. 409 of Rosenthal & Kalman,  
dated February 1, 1936.

13802

**Commission's Exhibit 987.**

Piracy Report, re style No. 415 of Rosenthal & Kalman,  
dated February 28, 1936.

**Commission's Exhibit 988.**

Letter from J. Goldston to Rosenthal & Kalman, dated  
February 20, 1936.

**Commission's Exhibit 989.**

Form letter, dated February 19, 1936, from J. M. Golby  
to Members and Affiliates of Fashion Originators Guild  
of America, Inc.

13803

**Commission's Exhibit 990.**

Form letter, dated February 22, 1936, from J. M. Golby  
to Members and Affiliates of Fashion Originators Guild  
of America, Inc.

13804

*Statement of Exhibits.***Commission's Exhibit 991.**

Two-page form letter, dated February 29, 1936, from J. M. Golby to Members and Affiliates of Fashion Originators Guild of America, Inc.

**Commission's Exhibit 992.**

Form letter, undated, from J. M. Golby to Members and Affiliates of Fashion Originators Guild of America, Inc., entitled "Acknowledgment Form for Members."

13805

**Commission's Exhibit 993.**

Notification to members re showing B. Foreman or Dayton Company.

**Commission's Exhibit 994.**

Form letter from J. M. Golby to members and affiliates of Fashion Originators Guild of America, Inc., dated May 11, 1936.

**Commission's Exhibit 995.**

Form letter from A. M. DeLisser to dress members of the Fashion Originators Guild of America, Inc., dated November 4, 1935.

13806

**Commission's Exhibit 996.**

Form letter from A. M. DeLisser to dress members of the Fashion Originators Guild of America, Inc., dated November 13, 1935.

**Commission's Exhibit 997.**

Form letter from A. M. DeLisser to dress members of the Fashion Originators Guild of America, Inc., dated December 3, 1935.

**Commission's Exhibit 998.**

Form letter from A. M. DeLisser to dress members of the Fashion Originators Guild of America, Inc., dated February 11, 1936.

**Commission's Exhibit 999.**

13808

Form letter entitled "First Letter with Declaration on Names" sent in by Fashion Originators Guild of America, Inc., signed by J. M. Golby.

**Commission's Exhibit 1000.**

Follow-up letter on names sent in by Dress Creators League Members and Affiliates, undated.

**Commission's Exhibit 1001.**

Form letter to retailers by J. M. Golby, undated.

**Commission's Exhibits 1002-A to 1002-J.**

13809

Correspondence and file on Goodwins.

**Commission's Exhibit 1002-A.**

Authorization for "red card" of Goodwins and Davidson Bros., dated January 7, 1936.

13810

*Statement of Exhibits.***Commission's Exhibit 1002-B.**

Letter from A. M. Post to Goodwins, dated January 7, 1936.

**Commission's Exhibit 1002-C.**

Report of refusal or failure to co-operate from Detroit Shopper re Goodwins, dated January 2, 1936.

**Commission's Exhibit 1002-D.**

13811 Letter from J. Goldston to Mrs. Miller, Detroit Shopper of Fashion Originators Guild of America, Inc., dated December 26, 1936.

**Commission's Exhibit 1002-E.**

Report of refusal or failure to co-operate from Detroit Shopper re Goodwins, dated December 26, 1935.

**Commission's Exhibit 1002-F.**

Letter from J. M. Golby to Mrs. Miller, dated December 5, 1935.

13812

**Commission's Exhibit 1002-G.**

Letter from Davidson Bros. (Goodwins) to Fashion Originators Guild of America, Inc., dated December 5, 1935.

**Commission's Exhibit 1002-H.**

Letter from J. M. Golby to Mrs. Miller, dated November 25, 1935.

*Statement of Exhibits.*

13813

**Commission's Exhibit 1002-I.**

Authorization for red card notice of non-co-operation re  
Davidson Bros.

**Commission's Exhibit 1002-J.**

Letter from J. M. Golby to Goodwins, dated September  
6, 1935.

**Commission's Exhibit 1002-K.**

Letter from Mrs. Miller to J. Goldston, dated July 9,  
1935.

13814

**Commission's Exhibit 1002-L.**

Declaration of Co-operation with Fashion Originators  
Guild of America, Inc., of Goodwins, dated July 30, 1935.

**Commission's Exhibit 1003-A.**

Letter from J. H. Green, Secretary, Retail Merchants  
Association of Pittsburgh, Pa., to J. M. Golby, dated  
March 24, 1934.

**Commission's Exhibit 1003-B.**

Reply from J. M. Golby to J. H. Green, dated March 26,  
1934.

13815

**Commission's Exhibit 1004.**

Letter from Irene Blunt, Director, Industrial Design  
Registration Bureau to the Trade, dated December 17,  
1935.

13816

*Statement of Exhibits.***Commission's Exhibit 1005-A.**

Letter from Miss Lapidus to Jack Goldston, dated November 1, 1935.

**Commission's Exhibit 1005-B.**

Letter from J. M. Golby to I. J. Shearer & Bro., dated November 6, 1935.

**Commission's Exhibits 1006-A and 1006-B.**

13817

Letter from J. M. Golby to H. Stanley Marcus of Neiman-Marcus Co., dated August 8, 1935.

**Commission's Exhibit 1006-C.**

Letter from J. M. Golby to H. Stanley Marcus of Neiman-Marcus Co., dated August 21, 1935.

**Commission's Exhibit 1006-D.**

Letter from J. A. Leavell of Marie Leavell to J. M. Golby, dated August 24, 1935.

**Commission's Exhibit 1006-E.**

13818

Letter from J. M. Golby to J. A. Leavell, dated August 26, 1935.

**Commission's Exhibit 1006-F.**

Letter from J. M. Golby to Herbert Nurse of Dreyfuss & Sons, dated August 26, 1935.

*Statement of Exhibits.*

13819

**Commission's Exhibit 1006-G.**

Letter from J. M. Golby to Ben Wittenberg of La Mode Co., dated August 26, 1935.

**Commission's Exhibit 1006-H.**

Letter from J. M. Golby to Herman Phillipson of Philipsons, Inc., dated August 26, 1935.

**Commission's Exhibit 1006-I.**

Letter from J. M. Golby to E. P. Simmons of Sanger Bros., dated August 26, 1935.

13820

**Commission's Exhibit 1006-J.**

Letter from B. H. Wittenberg to J. M. Golby, dated August 29, 1935.

**Commission's Exhibit 1006-K.**

Letter from E. P. Simmons of Sanger Bros. to J. M. Golby, dated August 29, 1935.

**Commission's Exhibits 1006-L and 1006-M.**

Letter from J. M. Golby to H. Stanley Marcus, dated September 3, 1935.

13821

**Commission's Exhibit 1007.**

Report of refusal or failure to co-operate re Ed. Shuster Co. by Dorothy Horowitz, Shopper, dated January 10, 1936.

13822

*Statement of Exhibits.*

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**Commission's Exhibit 1008-A.**

Letter from E. Bell of Esterlene Frocks on letterhead of Wheeler's Shoe Store, Inc., stationery to Fashion Originators Guild of America, Inc., dated January 27, 1936.

**Commission's Exhibit 1008-B.**

Letter from J. M. Golby to Herbert S. Keller, dated January 31, 1936.

**Commission's Exhibits 1008-C and 1008-D.**

13823

Letter from Weisman, Quinn, Allan & Spett to Fashion Originators Guild of America, Inc., dated February 1, 1936.

**Commission's Exhibit 1008-E.**

Letter from Fashion Originators Guild of America, Inc., to Esterlene Frocks, dated February 4, 1936.

**Commission's Exhibit 1009-A.**

Letter from Weisman, Quinn, Allan & Spett to Fashion Originators Guild of America, Inc., dated January 24, 1936.

13824

**Commission's Exhibits 1009-B and 1009-C.**

Letter from Weisman, Quinn, Allan & Spett to Florence Hertz, dated January 24, 1936.

**Commission's Exhibit 1009-D.**

Letter from Fashion Originators Guild of America, Inc., to Herbert S. Keller, dated January 22, 1936.

*Statement of Exhibits.*

13825

**Commission's Exhibit 1009-E.**

Letter from Sportcraft, Inc., to Fashion Originators Guild of America, Inc., dated January 21, 1936.

**Commission's Exhibit 1009-F.**

Letter from Hertz-Lang to Sportcraft, Inc., dated January 18, 1936.

**Commission's Exhibit 1009-G.**

Letter from Sportcraft, Inc., to Fashion Originators Guild of America, Inc., dated January 20, 1936.

13826

**Commission's Exhibit 1009-H.**

Letter from Hertz-Lang to Sportcraft, Inc., undated.

**Commission's Exhibit 1009-I.**

Authorization for red card of Hertz-Lang, dated January 8, 1936.

**Commission's Exhibit 1009-J.**

Letter from E. A. Fletcher of Michigan Avenue Guild to Fashion Originators Guild of America, Inc., dated January 6, 1936.

13827

**Commission's Exhibit 1010.**

Copy letter from A. M. Post of Fashion Originators Guild of America, Inc., to Ernst Kern Co., dated February 7, 1936.

13828

*Statement of Exhibits.*

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**Commission's Exhibit 1011-A.**

Report on refusal or failure to co-operate, dated February 7, 1936, re J. L. Hudson & Co., by Mrs. Miller, Shopper.

**Commission's Exhibit 1011-B.**

Copy day letter from Fashion Originators Guild of America, Inc., to Shopper, dated February 8, 1936.

**Commission's Exhibit 1011-C.**

13829 Letter from Fashion Originators Guild of America, Inc., to Shopper, dated February 10, 1936.

**Commission's Exhibit 1011-D.**

Letter from Shopper to J. Goldston, dated February 10, 1936.

**Commission's Exhibits 1011-E and 1011-F.**

Letter from Shopper to A. M. Post, dated February 12, 1936.

**Commission's Exhibit 1011-G.**

13830 Authorization for red card, dated February 13, 1936, of J. L. Hudson & Co.

**Commission's Exhibit 1012-A.**

Telegram from Miss Brady, Shopper, to J. Goldston, re R. H. White, undated.

*Statement of Exhibits.*

13831

**Commission's Exhibit 1012-B.**

Memorandum from Miss Brady, Shopper, to A. M. Post and J. Goldston, dated February 4, 1936.

**Commission's Exhibit 1012-C.**

Telegram from Miss Brady to Fashion Originators Guild of America, Inc., dated February 4, 1936.

**Commission's Exhibit 1012-D.**

Memorandum from A. M. Post to Miss Brady, dated February 5, 1936.

13832

**Commission's Exhibit 1012-E and 1012-F.**

Report on refusal to co-operate of R. H. White, dated February 6, 1936.

**Commission's Exhibit 1012-G.**

Letter, dated February 6, 1936, from Weisman, Quinn, Allan & Spett to A. M. Post.

**Commission's Exhibit 1012-H.**

Letter dated February 6, 1936, from J. M. Golby to B. F. Raphael of R. H. White Co., dated February 6, 1936.

13833

**Commission's Exhibit 1012-I.**

Authorization for red card, dated February 6, 1936, of R. H. White Co.

13834

*Statement of Exhibits.*

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**Commission's Exhibit 1013-A.**

Report on refusal to co-operate, dated January 2, 1936,  
of The Boston Store, by Dorothy Horowitz, Shopper.

**Commission's Exhibit 1013-B.**

Letter from Bender & Hamburger, Inc., to Fashion  
Originators Guild of America, Inc., dated January 4,  
1936.

**Commission's Exhibit 1013-C.**

13835

Letter from Fashion Originators Guild of America, Inc.,  
to The Boston Store, dated January 6, 1936.

**Commission's Exhibit 1013-D.**

Letter from Fashion Originators Guild of America, Inc.,  
to The Boston Store, dated January 13, 1936.

**Commission's Exhibit 1013-E.**

Letter from Herzfeld-Phillipson & Co. on letterhead of  
The Boston Store to Fashion Originators Guild of  
America, Inc., dated January 15, 1936.

13836

**Commission's Exhibit 1013-F.**

Letter from A. M. Post to The Boston Store, attention  
Mr. Rowse, dated January 17, 1936.

**Commission's Exhibit 1013-G.**

Report on refusal to co-operate, dated February 17,  
1936, of Herzfeld-Phillipson Co., by Dorothy Horowitz.

*Statement of Exhibits.*

13837

**Commission's Exhibit 1014-A.**

Report on refusal to co-operate, dated November 7, 1935,  
The Dayton Company, by Virginia McDonald, Shopper.

**Commission's Exhibit 1014-B.**

Memorandum from Fashion Originators Guild of  
America, Inc., to Miss McDonald, Shopper, dated Novem-  
ber 11, 1935.

**Commission's Exhibit 1014-C.**

Report on refusal to co-operate, dated November 22, 1935, re The Dayton Company. 13838

**Commission's Exhibit 1014-D.**

Letter from A. M. Post to Miss McDonald, Shopper,  
dated November 23, 1935.

**Commission's Exhibit 1014-E.**

Report on refusal to co-operate, dated November 26,  
1935, re The Dayton Company.

**Commission's Exhibits 1014-F and 1014-G.**

Letter from Fashion Originators Guild of America,  
Inc., to Mrs. Chase of The Dayton Company, dated Decem-  
ber 2, 1935. 13839

**Commission's Exhibits 1015-A and 1015-B.**

Letter from Grace Sinclair, Shopper, re Stix, Baer &  
Fuller, to J. Goldston, dated November 18, 1935.

13840

*Statement of Exhibits.***Commission's Exhibit 1015-C.**

Report on refusal to co-operate, dated November 18, 1935, of Stix, Baer & Fuller.

**Commission's Exhibit 1015-D.**

Memorandum from Fashion Originators Guild of America, Inc., to Miss Sinclair, Shopper, dated November 19, 1935.

**Commission's Exhibit 1016.**

13841

Declaration of Co-operation of McGlenn's of Minneapolis.

**Commission's Exhibit 1017.**

Declaration of Co-operation of Carolellan's of Salt Lake City.

**Commission's Exhibit 1018-A.**

Telegram from H. C. Capwell Co. to Fashion Originators Guild of America, Inc., dated October 23, 1935.

**Commission's Exhibit 1018-B.**

13842

Copy telegram to H. C. Capwell Co. from A. M. Post, dated October 22, 1935.

**Commission's Exhibits 1018-C and 1018-D.**

Copy letter from A. M. Post to Mr. Dinklespiel of H. C. Capwell Co., dated October 12, 1935.

*Statement of Exhibits.*

13843

**Commission's Exhibit 1018-E.**

Letter from A. M. Post to H. O. Bergdahl, dated October 12, 1935.

**Commission's Exhibits 1019-A and 1019-B.**

Letter to Mrs. A. M. Levy of John Shillito & Co. from A. M. Post, dated January 11, 1936.

**Commission's Exhibit 1019-C.**

Letter from Mrs. A. M. Levy to A. M. Post, dated January 9, 1936.

13844

**Commission's Exhibits 1020-A to 1020-D.**

Letter from A. M. Post to Ben Raphael of R. H. White Co., dated October 25, 1935.

**Commission's Exhibit 1020-E.**

Letter from B. Raphael to A. M. Post, dated October 30, 1935.

**Commission's Exhibit 1021-A.**

Letter from Wm. Filene's Sons Co. to Fashion Originals Guild of America, Inc., dated November 9, 1935.

13845

**Commission's Exhibit 1021-B.**

Copy letter from Wm. Filene's Sons Co. to Constantine Dress Co. of Boston, dated November 7, 1935.

**Commission's Exhibit 1021-C.**

Letter from J. Goldston to A. Wright of Wm. Filene's Sons Co., dated December 5, 1935.

13846

*Statement of Exhibits.*

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**Commission's Exhibit 1021-D.**

Letter from Wright of Wm. Filene's Sons Co. to A. M. Post, dated December 3, 1935.

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**Commission's Exhibits 1021-E and 1021-F.**

Letter from A. M. Post to A. Wright of Wm. Filene's Sons Co., dated November 27, 1935.

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**Commission's Exhibit 1021-G.**

13847 Letter from A. M. Post to Miss Brady, Shopper, dated November 27, 1935.

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**Commission's Exhibit 1021-H.**

Letter from A. M. Post to A. Wright of Wm. Filene's Sons Co., dated December 12, 1935.

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**Commission's Exhibit 1021-I.**

Memorandum from A. M. Post for the file, dated January 29, 1936.

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**Commission's Exhibit 1022-A.**

13848 Letter from J. Goldston to Earl Miller of Wm. Taylor Son & Co., dated March 21, 1935.

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**Commission's Exhibit 1022-B.**

Letter from Wm. Taylor Son & Co. to Fashion Originals Guild of America, Inc., dated March 23, 1935.

**Commission's Exhibits 1022-C and 1022-D.**

Letter draft from A. M. Post to Richard G. Roth of Wm. Taylor Son & Co., dated July 24, 1935.

**Commission's Exhibit 1022-E.**

Telegram from J. Goldston to E. Miller of Wm. Taylor Son & Co., dated September 5, 1935.

**Commission's Exhibit 1022-F.**

Letter of Mrs. Joseph, Shopper, to J. Goldston, dated September 5, 1935.

13850

**Commission's Exhibit 1022-G.**

Letter from E. Miller to J. Goldston, dated September 5, 1935.

**Commission's Exhibit 1022-H.**

Letter from J. M. Golby to W. E. Miller, dated October 3, 1935.

**Commission's Exhibit 1022-I.**

Letter from W. E. Miller to J. Goldston, dated October 2, 1935.

13851

**Commission's Exhibit 1022-J.**

Letter from Fashion Originators Guild of America, Inc., to W. E. Miller, dated January 21, 1936.

13852

**Commission's Exhibit 1022-K.**

Letter from Mrs. Joseph to J. Goldston, dated January 20, 1936.

**Commission's Exhibit 1022-L.**

Letter from Broadway Dance Frocks, Inc., to Wm. Taylor Sons & Co., dated January 16, 1936.

**Commission's Exhibit 1023-A.**

Authorization for red card re Strawbridge & Clothier, dated February 6, 1936.

13853

**Commission's Exhibit 1023-B.**

Letter from Miss Joyce, Shopper, to J. Goldston, dated February 8, 1936.

**Commission's Exhibit 1023-C.**

Memorandum of phone conversation by A. M. Post re Strawbridge & Clothier, dated February 10, 1936.

**Commission's Exhibit 1023-D.**

Memorandum from Fashion Originators Guild of America, Inc., to Miss Joyce, dated February 5, 1936, re Strawbridge & Clothier.

13854

**Commission's Exhibit 1023-E.**

Return receipt for registered letter to Strawbridge & Clothier.

**Commission's Exhibit 1023-F.**

Report of refusal or failure to co-operate by Strawbridge & Clothier, dated February 3, 1936.

**Commission's Exhibit 1023-G.**

Letter from Miss Joyce to J. Goldston, dated February 7, 1936.

**Commission's Exhibit 1023-H.**

Summary of a few of the 11,000 stores which have indicated their desire to co-operate with Fashion Originators Guild of America, Inc.

**Commission's Exhibit 1023-I.**

Letter from A. M. Post to H. J. Tiley of Strawbridge & Clothier, dated February 7, 1936. 13856

**Commission's Exhibit 1023-J.**

Letter from Miss Joyce to A. M. Post, dated January 30, 1936.

**Commission's Exhibit 1023-K.**

Letter from Miss Joyce to A. M. Post, dated January 24, 1936.

**Commission's Exhibit 1023-L.**

Letter from Miss Joyce to A. M. Post, dated January 17, 1936. 13857

**Commission's Exhibit 1023-M.**

Letter from J. Goldston to Miss Joyce, dated May 21, 1935.

13858

*Statement of Exhibits.*

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**Commission's Exhibit 1023-N.**

Letter from Miss Joyce to J. Goldston, dated May 20, 1935.

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**Commission's Exhibit 1023-O.**

Letter from J. Goldston to Miss Joyce, dated September 4, 1935.

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**Commission's Exhibit 1023-P.**

13859 Letter from J. Goldston to Miss Joyce, dated August 28, 1935.

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**Commission's Exhibit 1023-Q.**

Letter from Miss Joyce to J. Goldston, dated August 27, 1935.

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**Commission's Exhibit 1023-R.**

Letter from Fashion Originators Guild of America, Inc., to Miss Joyce, dated November 14, 1935.

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**Commission's Exhibit 1023-S.**

13860 Letter from Miss Joyce to J. Goldston, dated November 13, 1935.

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**Commission's Exhibit 1023-T.**

Telegram from A. M. Post to Miss Joyce, dated November 13, 1935.

**Commission's Exhibit 1023-U.**

13861

Memorandum from J. Goldston to Miss Joyce, dated October 11, 1935.

**Commission's Exhibit 1023-V.**

Memorandum from J. Goldston to Miss Joyce, dated November 7, 1935.

**Commission's Exhibit 1024-A.**

Letter from Miss Lapedus to J. Goldston, dated September 3, 1935.

**Commission's Exhibit 1024-B.**

13862

Telegram from A. M. Post to Hutzler Bros., dated September 4, 1935.

**Commission's Exhibits 1024-C to 1024-H.**

Letter to Chas. Hutzler from A. M. Post, dated September 7, 1935.

**Commission's Exhibit 1024-I.**

Letter from Chas. Hutzler to A. M. Post, dated September 4, 1935.

**Commission's Exhibit 1024-J.**

13863

Copy telegram from A. M. Post to Chas. Hutzler, dated September 4, 1935.

**Commission's Exhibits 1024-K and 1024-L.**

Copy letter from A. M. Post to Chas. Hutzler, dated September 30, 1935.

13864

*Statement of Exhibits.***Commission's Exhibit 1024-M.**

Letter from A. M. Post to Miss Lapedus, undated.

**Commission's Exhibit 1024-N.**

Letter from A. M. Post to Chas. Hutzler, dated October 3, 1935.

**Commission's Exhibit 1024-O.**

Letter from A. M. Post to L. R. Bonwit, dated October 3, 1935.

13865

**Commission's Exhibit 1024-P.**

Letter from Miss Lapedus to J. Goldston, dated October 21, 1935.

**Commission's Exhibit 1024-Q.**

Letter memorandum from J. Goldston to Miss Lapedus, dated September 23, 1936.

**Commission's Exhibit 1024-R.**

Letter from Miss Lapedus to J. Goldston, dated August 22, 1936.

13866

**Commission's Exhibit 1025-A.**

Letter from J. Goldston to Miss Lapedus, dated January 6, 1936.

*Statement of Exhibits.*

13867

**Commission's Exhibit 1025-B.**

Letter from Miss Lapedus to J. Goldston, dated January 3, 1936.

**Commission's Exhibit 1026.**

Letter memorandum from Miss Tuttle of Fashion Originators' Guild of America, Inc., to Miss Lapedus.

**Commission's Exhibit 1027-A.**

Letter from Fashion Originators' Guild of America, Inc., to The Gaxton Co., attention S. Lampell, dated January 20, 1934.

13868

**Commission's Exhibit 1027-B.**

Letter from Miss Lampell of The Gaxton Co. to Fashion Originators Guild of America, Inc.; J. M. Golby, dated January 29, 1934.

**Commission's Exhibit 1027-C.**

Letter from Fashion Originators Guild of America, Inc., J. M. Golby, to Miss Lampell of The Gaxton Co., dated January 23, 1934.

13869

**Commission's Exhibit 1028-A.**

Letter from Fashion Originators Guild of America, Inc., to Martin B. Kohn of Hochschild-Kohn, Inc., dated March 19, 1934.

**Commission's Exhibit 1028-B.**

Letter from Fashion Originators Guild of America, Inc., to Hochschild-Kohn, Inc., dated March 14, 1934.

13870

**Commission's Exhibit 1029.**

Letter from J. Goldston to The Hub Co. of Baltimore, attention Mr. Pollack, re defense of lawsuits.

**Commission's Exhibit 1030.**

Dollar volume of business of Dress Industry of United States for 1934, compiled by Research Department Dress Joint Board.

**Commission's Exhibit 1031.**

13871 Dollar volume of business of Dress Industry of United States for 1935, compiled by Research Department Dress Joint Board.

**Commission's Exhibit 1032.**

Recapitulation of card files, about April 1, 1936.

**Commission's Exhibit 1033.**

Recapitulation of registration of styles of members, Fashion Originators Guild of America, Inc., from June 1935, to December 17, 1936.

**Commission's Exhibit 1034.**

13872 Application of Rosenthal & Kalman, Inc., for protection against style piracy.

**Commission's Exhibit 1035.**

Declaration of Co-operation of Ernst Kern Co., dated June 18, 1936.

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**Commission's Exhibit 1036.**

Declaration of Co-operation of Holman's Department Store, Pacific Grove, dated April 8, 1936.

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**Commission's Exhibit 1037.**

Two-page letter from Holman's Department Store to Weinberg, Weinberg & Alpern, dated December 28, 1935.

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**Commission's Exhibit 1038.**

Letter to Holman's Department Store from Weinberg, Weinberg & Alpern, dated January 2, 1936.

13874

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**Commission's Exhibit 1039.**

Letter from Weinberg, Weinberg & Alpern to Fashion Originators Guild of America, Inc., Inc., dated January 2, 1936.

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**Commission's Exhibit 1040.**

Two-page letter from J. M. Golby of Fashion Originators Guild of America, Inc., to W. R. Holman of Holman's Department Store, dated January 3, 1936.

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**Commission's Exhibit 1050.**

13875

Total sales volume of 162 dress manufacturers who were during 1935 members of Fashion Originators Guild of America, Inc., broken down into "Dress Business" and "Other Than Dress Business."

13876

*Statement of Exhibits.***Commission's Exhibit 1051.**

Total sales volume of seventy-eight dress manufacturers who were during 1934 members of Fashion Originators Guild of America, Inc., broken down into "Dress Business" and "Other Than Dress Business."

**Commission's Exhibit 1052.**

Total sales volume of sixty-two dress manufacturers who were during 1933 members of Fashion Originators Guild of America, Inc., broken down into "Dress Business" and "Other Than Dress Business."

13877

**RESPONDENTS' EXHIBITS.****Respondents' Exhibit 4.**

Order of R. H. White on Noxall Waist & Dress Co., dated September 9, 1935.

**Respondents' Exhibit 5.**

Order of Kaufmann's on Noxall Waist & Dress Co., dated September 18, 1935.

13878

**Respondents' Exhibit 6.**

Order of Joseph Horne on Noxall Waist & Dress Co., dated September 13, 1935.

**Respondents' Exhibit 7.**

Credit memorandum of Noxall Waist & Dress Co. to Luries, dated September 24, 1935.

**Respondents' Exhibit 8.**

Original letter of co-operation, Wm. Filene's Sons Co., signed by Arthur W. Wright, dated June 29, 1933.

**Respondents' Exhibit 9.**

Copy of letter from Fashion Originators Guild of America, Inc., to Mr. Wright of Wm. Filene's Sons Co. acknowledging receipt of Respondents' Exhibit 8, dated July 1, 1933.

**Respondents' Exhibit 10.**

Letter from Wm. Filene's Sons Co. over signature of Arthur W. Wright to Fashion Originators Guild of America, Inc., dated July 5, 1933. 13880

**Respondents' Exhibit 11.**

Letter from Fashion Originators Guild of America, Inc. signed by J. M. Golby to A. W. Wright of Wm. Filene's Sons Co., dated July 7, 1933.

**Respondents' Exhibit 12-A.**

Letter from A. W. Wright of Wm. Filene's Sons Co. to J. M. Golby of Fashion Originators Guild of America, Inc., dated August 9, 1933.

**Respondents' Exhibit 12-B.**

Instructions to dress buyers by A. W. Wright, dated August 8, 1933, enclosed in Respondents' Exhibit 12-A. 13881

**Respondents' Exhibit 12-C.**

Letter from A. W. Wright of Wm. Filene's Sons Co. to Fashion Originators Guild of America, Inc., dated August 8, 1933.

13882

*Statement of Exhibits.***Respondents' Exhibits 12-D and 12-E.**

Form letter of J. M. Golby of Fashion Originators Guild of America, Inc., to trade, dated August 3, 1933.

**Respondents' Exhibit 17.**

Letter from H. J. Tily of Strawbridge & Clothier to A. M. Post of Fashion Originators Guild of America, Inc., dated February 8, 1936.

**Respondents' Exhibit 18-A.**

13883 Letter from A. M. Post to H. J. Tily, dated February 1936.

**Respondents' Exhibit 18-B.**

Summary of a few of the 11,000 stores which have indicated their desire to co-operate with the Fashion Originators Guild of America, Inc., either by direct letter or by signing the Declaration of Co-operation.

**Respondents' Exhibit 19.**

Notification re refusal to co-operate of Strawbridge & Clothier, dated February 6, 1936.

**Respondents' Exhibit 20.**

13884 Copy of warranty stamp suggested by the Fashion Originators Guild of America, Inc., to be used by the retailer.

**Respondents' Exhibit 24.**

Letter of W. E. Miller of Wm. Taylor & Son to Fashion Originators Guild of America, Inc., listing outstanding orders at time of stipulation entered in Filene suit against Fashion Originators Guild of America, Inc., dated March 11, 1936.

**Respondents' Exhibit 25.**

Letter of W. E. Miller of Wm. Taylor & Co. to J. M. Golby of Fashion Originators Guild of America, Inc., dated March 21, 1936.

**Respondents' Exhibit 26.**

Letter of W. E. Miller of Wm. Taylor & Co. to J. M. Golby of Fashion Originators Guild of America, Inc., dated March 16, 1936.

**Respondents' Exhibit 27.**

Letter of W. E. Miller of Wm. Taylor & Son to J. M. Golby of Fashion Originators Guild of America, Inc., dated March 23, 1936. 13886

**Respondents' Exhibit 28.**

Telegram of W. E. Miller of Wm. Taylor & Son to A. M. Post, dated March 13, 1936.

**Respondents' Exhibit 29.**

Telegram of W. E. Miller of Wm. Taylor & Son to A. M. Post, dated March 12, 1936.

**Respondents' Exhibit 30.**

Copy of letter from J. M. Golby of Fashion Originators Guild of America, Inc., to W. E. Miller of Wm. Taylor & Son, dated March 19, 1936. 13887

**Respondents' Exhibit 31.**

Copy of telegram from A. M. Post to W. E. Miller of Wm. Taylor & Son, dated March 12, 1936.

13888

*Statement of Exhibits.***Respondents' Exhibit 32.**

Copy of telegram from A. M. Post to W. E. Miller  
Wm. Taylor & Son, dated March 13, 1936.

**Respondents' Exhibit 33.**

Letter from Wm. Taylor & Son to J. Goldston  
Fashion Originators Guild of America, Inc., dated Mar  
4, 1935.

**Respondents' Exhibit 34.**

13889

Original Declaration of Co-operation, signed C. P.  
Strong, General Manager of Wm. Taylor & Son, date  
June 30, 1933.

**Respondents' Exhibit 35.**

Letter from W. E. Miller of Wm. Taylor & Son to J. M.  
Golby of Fashion Originators Guild of America, Inc.  
dated August 9, 1933.

**Respondents' Exhibit 37.**

Letter from P. J. Reilly to A. M. Post, dated Febru  
ary 14, 1936.

13890

**Respondents' Exhibit 38-A.**

Telegram from Wm. Taylor & Son to Fashion Origin  
ators Guild of America, Inc., dated February 17, 1936.

**Respondents' Exhibit 38-B.**

Two-page night letter from Fashion Originators Guild  
of America, Inc., to Wm. Taylor Son & Co., dated Feb  
ruary 16, 1936.

**Respondents' Exhibit 39.**

Letter from R. G. Roth of Wm. Taylor Son & Co. to Fashion Originators Guild of America, Inc., dated February 21, 1936.

**Respondents' Exhibits 40-A and 40-B.**

Letter to R. G. Roth of Wm. Taylor Son & Co. from A. M. Post of Fashion Originators Guild of America, Inc., dated February 26, 1936.

**Respondents' Exhibit 41.**

13892

Two-page advertisement by Fashion Originators Guild of America, Inc., in Women's Wear Daily, dated February 24, 1936.

**Respondents' Exhibits 43-A and 43-B.**

Two-page letter from A. M. Post of Fashion Originators Guild of America, Inc., to Mr. McDonald of J. L. Hudson Co., dated November 12, 1936.

**Respondents' Exhibit 44.**

Advertisement in Women's Wear Daily, inserted by Dress Creators League of America, announcing itself in favor of protection of styles.

13893

**Respondents' Exhibit 45.**

Advertisement in Women's Wear Daily, inserted by Dress Creators League of America, announcing co-operation of Dress Creators League of America with Fashion Originators Guild of America, Inc., on style piracy, dated August 9, 1933.

13894

*Statement of Exhibits.***Respondents' Exhibit 46.**

Letter of Associated Buying Offices signed by H. Bergdahl and M. J. Greenebaum as a special committee to Fashion Originators Guild of America, Inc., dated August 3, 1935.

**Respondents' Exhibit 52.**

Telegram from Wyzanski of Mandel Bros. of Chicago to New York office, dated May 14, 1936.

13895

**Respondents' Exhibit 53.**

Telegram from P. J. Reilly to Stanley Stone of The Boston Store, dated March 10, 1936.

**Respondents' Exhibit 54.**

Telegram from L. C. Dillon of The Boston Store to M. Post, dated March 12, 1936.

**Respondents' Exhibit 55.**

Telegram from A. M. Post to L. C. Dillon of The Boston Store, dated March 12, 1936.

13896

**Respondents' Exhibit 56.**

Telegram from L. C. Dillon to A. M. Post, dated March 12, 1936.

**Respondents' Exhibit 57.**

Telegram from A. M. Post to L. C. Dillon, dated March 13, 1936.

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**Respondents' Exhibit 58.**

Letter from Roy H. Bjorkman to J. M. Golby, dated July 2, 1935.

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**Respondents' Exhibit 59.**

Letter from Roy H. Bjorkman to A. Sapero of Shapiro & Baer, dated July 2, 1935.

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**Respondents' Exhibits 60-A and 60-B.**

Declaration of Co-operation with Fashion Originators Guild of America, Inc., signed by Minneapolis Guild of Fashion Retailers, Roy H. Bjorkman, Chairman. 13898

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**Respondents' Exhibit 62.**

Letter from D. Donovan of The Dayton Co. to J. M. Golby of Fashion Originators Guild of America, Inc., dated June 7, 1934.

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**Respondents' Exhibit 63.**

Letter from D. Donovan of The Dayton Co. to H. O. Bergdahl of The Associated Merchandising Corporation, dated July 12, 1935.

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**Respondents' Exhibits 64-A and 64-B.**

13899

Two-page letter from H. O. Bergdahl to D. Donovan, dated August 28, 1936.

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**Respondents' Exhibit 65.**

Blank form for Piracy Committee Report.

13900

*Statement of Exhibits.***Respondents' Exhibit 66.**

Blank form of report of refusal or failure to co-operate.

**Respondents' Exhibits 67-A, 67-B and 67-C.**

Removal slips from old form of Shoppers' Return Book.

**Respondents' Exhibits 68-A, 68-B and 68-C.**

Sample forms for shopper's report on shopping.

13901

**Respondents' Exhibit 69.**

General letter from J. Goldston to shoppers, dated April 2, 1936.

**Respondents' Exhibit 70.**

Sample sketch of copy and notification to shopper of dress of Feinberg & Weisen.

**Respondents' Exhibit 71.**

Sample sketch of copy and notification to shopper, No. 1020, Worthmore Co.

13902

**Respondents' Exhibit 72.**

Report on refusal or failure to co-operate of The Dayton Co. signed by Virginia McDonald, dated November 7, 1935.

**Respondents' Exhibit 73.**

Report on refusal or failure to co-operate of The Dayton Co. signed by Virginia McDonald, dated November 20, 1935.

**Respondents' Exhibit 74.**

Letter from H. W. Lund, Controller of Klein's of Peoria, Illinois, to Henry Junge, Jr., of the Federal Trade Commission, Chicago office, dated December 16, 1935.

**Respondents' Exhibit 75.**

13904

Letter of J. M. Golby to C. F. Roycroft of Ladies' Ready to Wear Guild of Baltimore, dated October 31, 1935.

**Respondents' Exhibit 76.**

Minutes of Board of Control of Ladies' Ready to Wear Guild of Baltimore, dated September 23, 1933.

**Respondents' Exhibit 77.**

Declaration of Co-operation in form of a letter of John Shillito & Co., dated July 1, 1933.

**Respondents' Exhibit 78.**

13905

Letter from L. R. Minster, Vice-President of John Shillito & Co., to Fashion Originators Guild of America, Inc., dated February 29, 1936.

**Respondents' Exhibit 79.**

Copy of two-page letter from A. M. Post to Irving Plaut of John Shillito & Co., dated May 21, 1935.

13906

*Statement of Exhibits.***Respondents' Exhibit 80.**

Telegram from Fashion Originators Guild of America, Inc., to L. R. Minster of John Shillito & Co., dated March 12, 1936.

**Respondents' Exhibit 81.**

Telegram from L. R. Minster of John Shillito & Co. to Fashion Originators Guild of America, Inc., dated March 12, 1936.

13907

**Respondents' Exhibit 82.**

Copy of advertisement of John Shillito & Co. inserted in Cincinnati Enquirer, dated November 6, 1935.

**Respondents' Exhibit 86.**

Two-page letter to M. Rentner from B. Foreman of B. Foreman Co. constituting their declaration of co-operation, dated December 29, 1932.

**Respondents' Exhibit 88.**

13908

Declaration of Co-operation of the Associated Merchandising Corporation signed by H. O. Bergdahl, received July 5, 1933.

**Respondents' Exhibit 89.**

Letter from H. O. Bergdahl to J. M. Golby, dated October 19, 1934.

**Respondents' Exhibit 90.**

Advertisement inserted by Raphael Weill & Co., "The White House," in the San Francisco Shopping News, dated October 15, 1934.

**Respondents' Exhibit 91.**

Advertisement inserted by Abraham & Straus in New York Herald-Tribune, dated March 10, 1935.

**Respondents' Exhibit 92.**

Letter from J. M. Golby to H. O. Bergdahl of Associated Merchandising Corporation, dated October 29, 1935.

13910

**Respondents' Exhibit 93.**

Five-page report and notes of Mr. Rosensweig of Associated Merchandising Corporation, Assistant Buyer, dated March 4, 1936.

**Respondents' Exhibit 97.**

First application of Rosenthal & Kalman to Fashion Originators Guild of America, Inc., for protection against style piracy.

13911

**Respondents' Exhibits 98-A and 98-B.**

Certificate of Incorporation of Fashion Originators Guild of America, Inc.

**Respondents' Exhibit 100.**

Letter from H. J. Tily of Strawbridge & Clothier to Fashion Originators Guild of America, Inc., dated June 30, 1933.

13912

*Statement of Exhibits.***Respondents' Exhibit 101.**

Declaration of Co-operation of Associated Merchandising Corporation on behalf of Bullock's, signed by H. O. Bergdahl, received July 5, 1933.

**Respondents' Exhibit 102.**

Declaration of Co-operation in form of letter from C. J. Larsen of The Dayton Co. to Fashion Originators Guild of America, Inc., dated July 1, 1933.

13913

**Respondents' Exhibit 122.**

Card catalogue of Dress Manufacturers, 1934.

**Respondents' Exhibit 123.**

Recapitulation of available resources, 1934, taken from Official Records of Dress Code Authority, N.R.A.

**Respondents' Exhibit 124.**

Card catalogue of Dress Manufacturers, 1935.

**Respondents' Exhibit 125.**

13914

List of non-Guild manufacturers and their dollar volume from credit agencies making merchandise \$16.75 and up, wholesale.

**Respondents' Exhibit 126.**

Names of firms appearing on Commission's Exhibit 450-H making merchandise, wholesale cost, under \$16.50 per garment as well, and their dollar volume derived from credit agencies.

4639

**Order and Stipulation as to Exhibits.**

13915

IN THE

**UNITED STATES CIRCUIT COURT OF APPEALS**

**FOR THE SECOND CIRCUIT.**

FASHION ORIGINATORS'S GUILD OF AMERICA, INC., MICHIGAN AVENUE GUILD OF CHICAGO, MINNEAPOLIS FASHION GUILD, LADIES' READY-TO-WEAR GUILD OF BALTIMORE, INC., NATIONAL FEDERATION OF TEXTILES, INC., and their respective officers, directors and members, et al.;

Petitioners,

v.

FEDERAL TRADE COMMISSION,

Respondent.

DOCKET  
16581

13916

Upon the annexed stipulation of counsel for the parties herein,

IT IS ORDERED that the exhibits certified as a part of the record in this case be not printed but that they be accepted and filed as physical exhibits to be used at the argument, in the briefs of counsel and in the decision of this case, as though the said exhibits had been printed.

13917

**HARRIE B. CHASE,**  
*U. S. C. J.*

Jan. 18, 1940.

13918

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE SECOND CIRCUIT.

FASHION ORIGINATORS'S GUILD OF AMERICA, INC., MICHIGAN AVENUE GUILD OF CHICAGO, MINNEAPOLIS FASHION GUILD, LADIES' READY-TO-WEAR GUILD OF BALTIMORE, INC., NATIONAL FEDERATION OF TEXTILES, INC., and their respective officers, directors and members, et al.,

Petitioners,

v.

13919

FEDERAL TRADE COMMISSION,

Respondent.

IT IS HEREBY STIPULATED by and between the attorneys for the Federal Trade Commission and the attorneys for the petitioners, that the exhibits in the record now before this court be not printed, but that the originals of these exhibits may be filed physically with the court and may be used in the argument or printed as an appendix to the briefs of counsel, the same as though said exhibits had been printed.

Dated this 17th day of January, 1940.

13920

W. T. KELLEY,

Chief Counsel for Federal Trade Commission.

MARTIN A. MORRISON,

Assistant Chief Counsel for Federal Trade Commission.

EVERETT F. HAYCRAFT,

Attorney for Federal Trade Commission.

WEISMAN, QUINN, ALLAN &amp; SPETT,

Attorneys for Petitioners.

## Stipulation as to Omissions from Record.

13921

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT.

FASHION ORIGINATOR'S GUILD OF AMERICA, INC., MICHIGAN AVENUE GUILD OF CHICAGO, MINNEAPOLIS FASHION GUILD, LADIES' READY-TO-WEAR GUILD OF BALTIMORE, INC., NATIONAL FEDERATION OF TEXTILES, INC., and their respective officers, directors and members, et al.,

Petitioners,

against

FEDERAL TRADE COMMISSION;

Respondent.

13922

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the Federal Trade Commission and the attorneys for the petitioners as follows:

(a) On or about June 25, 1936, petitioners moved for a stay of hearings in the within matter pending a decision of the United States Court in the case of *William Filene's Sons Company vs. Fashion Originators Guild of America, Inc.*, which motion was denied by an order entered June 29, 1936.

13923

(b) At the conclusion of the Commission's case petitioners moved to dismiss the complaint, which motion was denied by orders dated August 18, 1937 and September 14, 1937.

(c) All exhibits were physically offered for identification and marked in evidence when admitted.

13924

*Stipulation as to Matter Omitted.*

(d) Counsel for the Federal Trade Commission and counsel for the petitioners made objection appropriate in form as to the competency, relevancy and materiality of all evidence propounded and in opposition to exhibits admitted into evidence and took exception appropriate in form to the exclusion of all evidence and exhibits excluded.

(e) In printing the record in the above-entitled matter the following portions of the transcript of the record shall be eliminated therefrom and not be printed as a part of the record except that if dispute arise with respect to any matter, the original minutes shall govern:

13925

1. Answer of Marshall Field & Co.
2. Answer of Ladies' Ready-to-Wear Guild of Baltimore.
3. Answer of Michigan Avenue Guild of Chicago.
4. Answer of Lit Bros., Inc.
5. Answer of Joseph Horne Co.
6. Answer of Bullock's, Inc.
7. Answer of Emporium Capwell Corporation.
8. Answer of Minneapolis Fashion Guild.
9. Answer of G. H. Conze.
10. Answer of John Wanamaker.
11. Answer of Allied Stores Corporation.
12. Answer of Lindner Company.
13. Notice of motion to dismiss on behalf of G. H. Conze, June 9, 1936.
14. Order denying motion to dismiss on behalf of G. H. Conze.
15. Notice of motion to dismiss on behalf of G. H. Conze, dated December 29, 1936.
16. Order denying motion to dismiss on behalf of G. H. Conze.
17. Petition to dismiss by Fashion Originator's Guild of America, Inc., received August 12, 1937.

13926

*Stipulation as to Matter Omitted.*

13927

18. Exhibit A annexed to Guild's motion to dismiss, dated August, 1937.
19. Exhibit B annexed to Guild's motion to dismiss, dated August, 1937.
20. Exhibit C annexed to Guild's motion to dismiss, dated August, 1937.
21. Exhibit D annexed to Guild's motion to dismiss, dated August, 1937.
22. Exhibit E annexed to Guild's motion to dismiss, dated August, 1937.
23. Exhibit F annexed to Guild's motion to dismiss, dated August, 1937.
24. Exhibit G annexed to Guild's motion to dismiss, dated August, 1937.
25. Exhibit H annexed to Guild's motion to dismiss, dated August, 1937.
26. Exhibit I annexed to Guild's motion to dismiss, dated August, 1937.
27. Order of Federal Trade Commission denying petition to dismiss, dated August 18, 1937.
28. Petition of Fashion Originator's Guild of America, Inc., for rehearing on motion to dismiss, received by Federal Trade Commission on August 27, 1937.
29. Order denying petition to dismiss, dated September 14, 1937.
- 29a. Pages A, B, C, preceding page 1.
30. Page 49, from "Mr. Weisman: Wait a minute" to "Examiner Bennett: All right, go ahead. Proceed, please", page 59.
31. Page 77 to top of page 105, in which Commission's Exhibits 13 to 87, inclusive, were marked for identification.
32. Page 106, from "Mr. Weisman: Now, just a moment", to page 109, "Mr. Weisman: Excuse me".
33. Pages A, B, C, D, preceding page 148.

13928

13929

13930

*Stipulation as to Matter Omitted.*

13931

13932

34. Pages 150 to 161, inclusive, in which Commission's Exhibits 90-A to 96-G were offered in evidence.
35. Page 165, from "Mr. Weisman: Just a moment", to page 171, "Commission's Exhibit 97-N for Identification" being identification of Commission's Exhibits 97-A to N for Identification.
36. Page 192, "Mr. Haycraft: I ask that this document be marked for identification", to page 194, "By Mr. Haycraft", being marking of Exhibits 98-A to M for Identification.
37. Page 206, "Mr. Weisman: Are there any such on the list", to page 260, identifying Exs. 103 to 242.
38. Pages A, B, C, preceding page 261.
39. Pages 263 to 266 up to "Commission's Ex. 120 was marked as an exhibit and received in evidence."
40. Page 268, "Mr. Haycraft: I offer in evidence Com. Ex. 122", to page 278, "Commission's Ex. 137 was marked as an exhibit and received in evidence." All these exhibits were objected to on the same grounds as Comm. Ex. 121.
41. Page 278, "Mr. Haycraft: I offer in evidence Com. Ex. 138", to page 331, "Commission's Exs. 282-A and 282-B and were received in evidence."
42. Page A, preceding page 414.
43. Page 428, "Mr. Weisman: It is perfectly relevant" to page 431, "and I strenuously object to it."
44. Page 432, "Mr. Haycraft: I beg your pardon", to page 435, "if I may interrupt you for a moment."
45. Pages 473 to 477.
46. Page A, preceding page 569.
47. Page 573, "Mr. Martin: I do not think", to page 575, "objection overruled."
48. Page 623, "Mr. Martin: I object to that question", to page 625, "(last question again read)".
49. Page 633, "A. Force like a bludgeon would have", to page 634, "once or twice already, has he not".

*Stipulation as to Matter Omitted.*

13933

50. Page 635, "May I amplify that", to page 637, "Thank you."
51. Page 648, "This is simply reading", to page 651, "The same objection, your Honor."
52. Page 684, "Mr. Martin: Your Honor, please", to page 692, "(last question read)".
53. Page 700, from "returns \$5,019.80", to page 701, "strike out the returns".
54. Page A, preceding, and pages 752-755, "all right, Mr. Lieber".
55. Page 769, "The effect on my business", to page 772, "as to the effect upon your business".
56. Page 774, "In the first place", to page 776, "Mr. Haycraft: No, sir". 13934
57. Page 777, to "marked for id. Com. Ex. 314," page 778.
58. Page 788, "(Invoice from Schunemans)", to page 790, "marked for id. Comm. Exhibit 330".
59. Page 809, "Mr. Haycraft: May I point out", to "but not the other", page 813.
60. Page 823, "Mr. Weisman: I object", to page 825, "The witnesses thereupon retained".
61. Page 831, "Mr. Haycraft: I object, Mr. Examiner", to page 835, "I will refrain from that, but I will just ask him this question".
62. Page 846, "Mr. Haycraft: Mr. Examiner, I would like to know", to page 853, "(last question read as follows)". 13935
63. Page 855, "Mr. Haycraft: Now, Mr. Examiner, this witness has testified", to "(Question read)", page 856.
64. Page A, preceding, and pages 918 to 923, "Examiner Bennett: All right".
65. Page 1038, "Mr. Weisman: Exception", to page 1040, "I will remain seated".

13936

*Stipulation as to Matter Omitted.*

13937

13938

66. Page 1043, "stamp gave him that privilege", to page 1045, "I do not want to argue".
67. Page 1048, "Mr. Haycraft: Objected to", to "ahead and answer it, if he can", page 1050.
68. Page 1053, "The Witness: May I answer", to page 1054, "if you feel that you can".
69. Page 1074, "Mr. Haycraft: I object", to page 1075 "Mr. Weisman: Thank you, your Honor".
70. Page 1079<sup>1</sup> to following page, "to give the substance of the conversation".
71. Page 1080, from "Q. If that were so", to end of page
72. Page A, preceding page 1092.
73. Page 1103, "Q. Was there anything said at that time", to end of page 1105.
74. Page 1111, "Mr. Weisman: Just a moment", to page 1115, "without any further explanation".
75. Page 1123, "Mr. Weisman: Just a moment", to page 1125, "take a few moments".
76. Page 1127, "Q. When you testified", to bottom of page 1129.
77. Page 1136, "Examiner Bennett: What?", to page 1142, "I still urge my question".
78. Page 1160, "Q. Let us see", to page 1162, "We are through with that, Mr. Haycraft".
79. Page 1165, "Mr. Ballan: Just a moment", to page 1167, "Mr. Weisman: Thank you".
80. Page 1177, "(Letter from W. J. Shields)", to page 1183, "Comm. Ex. 351".
81. Page 1184, "(Letter from A. E. Stern)", to page 1190, "Comm. Ex. 356-E".
82. Page A, preceding page 1196.
83. Page 1203, line 7, to page 1204, line 9.
84. Page 1204, line 20, to page 1205, line 20.
85. Page 1206, line 11, to page 1208, line 5.
86. Page 1242, line 14, to page 1244, line 2.
87. Page 1260, line 22, to page 1262, line 11.

88. Page 1267, lines 9 to 25.
89. Page 1275, lines 3 to 17.
90. Page 1290, line 11, to page 1294, line 14.
91. Page 1301, line 2, to page 1302, line 10.
92. Page 1303, line 20, to page 1304, line 10.
93. Page 1311, line 9, to page 1312, line 19.
94. Page 1322, line 2, to page 1325, line 15.
95. Page 1325, line 19, to page 1330, line 22.
96. Page 1344, line 24, to page 1346, line 6.
97. Page 1352, line 22, to page 1356, line 11.
98. Page A, preceding page 1357.
99. Page 1363, line 3, to page 1365, line 19.
100. Page 1373, line 9, to page 1375, line 22.
101. Page 1395, line 14, to page 1406, line 1.
102. Page 1410, line 22, to page 1413, line 14.
103. Page 1423, lines 1 to 24.
104. Page 1428, line 13, to page 1429, line 4.
105. Page 1450, line 9, to page 1451, line 4.
106. Page 1458, line 12 to line 25.
107. Page 1461, line 6, to page 1465, line 15.
108. Page 1486, line 11, to page 1490, line 1.
109. Page 1502, line 1, to page 1505, line 25.
110. Page 1511, line 4, to page 1512, line 6.
111. Page 1534, line 15, to page 1535, line 9.
112. Page 1545, "Mr. Weisman: I object as incompetent",  
to page 1546, line 16.
113. Page 1555, line 21, to page 1556, line 15.
114. Page 1558, line 12, to page 1560, line 16.
115. Page A, preceding page 1585.
116. Page 1598, line 25, to page 1601, line 8.
117. Page 1613, "Mr. Martin: I object", to page 1615, "I  
will let the witness answer."
118. Page 1620, line 5, to page 1623, line 10.
119. Page 1629, line 24, to page 1631, line 13.
120. Page 1634, line 10, to page 1635, line 8.
121. Page 1645, lines 8 to 23.

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122. Page 1646, lines 15 to 24.
123. Page 1654, line 1, to page 1655, line 18.
124. Page 1657, line 16, to page 1658, line 20.
125. Page 1659, line 25, to page 1662, line 16.
126. Page 1692, line 3, to page 1695, line 3.
127. Page 1698, line 19, to page 1699, line 18.
128. Page 1717, line 17, to page 1719, line 12.
129. Page A preceding page 1720.
130. Page 1729, line 15, to page 1733, line 15.
131. Page 1736, line 8, to page 1738, line 9.
132. Page 1745, line 25, to page 1746, line 24.
133. Page 1778, line 15, to page 1779, line 20.
134. Page 1782, line 6, to page 1783, line 5.
135. Page 1785, line 15, to page 1786, line 4.
136. Page 1786, line 18, to page 1791, line 4.
137. Page 1825, line 13, to page 1826, line 11.
138. Page 1791, lines 19 to 25.
139. Page 1831, lines 1 to 10.
140. Page 1841, line 11, to page 1842, line 7.
141. Page 1847, line 23, to page 1855, line 1.
142. Page 1855, line 12, to page 1860, line 10.
143. Page 1876, lines 11 to 21.
144. Page 1877, line 21, to page 1888, line 8.
145. Pages A and B preceding page 1895.
146. Page 1900, line 1, to page 1901, line 1.
147. Page 1901, line 11, to page 1903, line 3.
148. Page 1908, line 19, to page 1909, line 22.
149. Page 1903, line 18, to page 1905, line 17.
150. Page 1940, line 25, to page 1941, line 21.
151. Page 1942, line 4, to page 1943, line 3.
152. Page 1945, line 9, to page 1959, line 10.
153. Page 1959, line 16, to page 1962, line 20.
154. Page 1963, line 10, to page 1964, line 4.
155. Page 1970, line 11, to page 1971, line 5.
156. Page 1973, line 15, to page 1976, line 3.

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157. Page 1977, line 4, to page 1978, line 11.
158. Page 1982, line 11, to page 1983, line 12.
159. Page 1986, line 7, to page 1987, line 17.
160. Page 1988, line 11, to page 1989, line 12.
161. Page 1992, line 15, to page 1993, line 16.
162. Page 1995, line 15, to page 1996, line 14.
163. Page 2007, line 19, to page 2023, line 15.
164. Page 2024, line 9, to page 2026, line 20.
165. Page 2028, lines 2 to 22.

166. Page 2035, line 8, to page 2036, line 6.
167. Page 2037, line 21, to page 2039, line 3.
168. Page 2052, line 20, to page 2053, line 20.
169. Page 2054, line 8, to page 2055, line 15.
170. Page 2062, line 25, to page 2064, line 11.
171. Page 2075, line 2, to page 2077, line 14.
172. Page 2079, line 13, to page 2081, line 18.
173. Page 2096, line 14, to page 2101, line 25.
174. Page 2110, line 14, to page 2113, line 17.
175. Page 2114, line 4, to page 2116, line 17.
176. Page 2117, line 1, to page 2118, line 3.
177. Page 2121, line 1, to page 2123, line 15.
178. Page 2127, line 14, to page 2130, line 6.
179. Page 2135, line 17, to page 2136, line 19.
180. Page 2138, line 11, to page 2142, line 3.
181. Page 2151, lines 2 to 12.

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182. Page 2159, line 8, to page 2160, line 4.
183. Page 2163, line 11, to page 2165, line 16.
184. Page 2166, lines 4 to 14.
185. Page 2169, line 3, to page 2179, line 16.
186. Page 2170, line 25, to page 2171, line 21.
187. Page 2180, line 23, to page 2183, line 1.
188. Page 2185, line 12, to page 2186, line 7.
189. Page 2192, line 2, to page 2196, line 15.
190. Page 2197, line 23, to page 2199, line 24.
191. Page 2200, line 22, to page 2202, line 9.

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192. Page 2202, line 11, to page 2203, line 3.
193. Page 2212, line 4, to page 2213, line 4.
194. Page 2223, line 2, to page 2226, line 18.
195. Page 2229, line 14, to page 2231, line 8.
196. Page 2232, lines 11 to 16.
197. Page 2251, line 11, to page 2252, line 14.
198. Page 2258, line 11, to page 2260, line 6.
199. Page A preceding page 2284.
200. Page 2295, lines 1 to 13.
201. Page 2296, line 8, to page 2300, line 13.
202. Page 2303, line 12, to page 2307, line 6.
203. Page 2311, lines 9 to 25.
- 13949 204. Page 2333, line 16, to page 2338, line 17.
205. Page 2343, lines 2 to 18.
206. Page 2345, line 13, to page 2346, line 9.
207. Page 2351, line 20, to page 2356, line 17.
208. Page 2357, line 25, to page 2359, line 20.
209. Page 2385, lines 1 to 14.
210. Page 2406, line 17, to page 2408, line 4.
211. Page 2415, lines 2 to 17.
212. Page 2415, line 25, to page 2417, line 2.
213. Page 2431, line 21, to page 2436, line 17.
214. Page 2467, line 11, to page 2469, line 7.
215. Page 2485, line 10, to page 2486, line 10.
216. Page 2530, line 20, to page 2531, line 22.
217. Page 2542, line 6, to page 2544, line 7.
218. Page 2552, line 4, to page 2553, line 16.
- 13950 219. Page 2558, line 8, to page 2559, line 8.
220. Page 2564, line 14, to page 2565, line 13.
221. Page 2565, line 22, to page 2567, line 25.
222. Page 2569, line 12, to page 2574, line 6.
223. Page 2576, line 16, to page 2577, line 12.
224. Page 2583, lines 3 to 21.
225. Page 2588, line 12, to page 2589, line 16.
226. Page 2595, line 4, to page 2596, line 10.

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227. Page 2599, line 5, to page 2600, line 9.
228. Page 2604, line 24, to page 2606, line 7.
229. Page 2607, line 12, to page 2610, line 10.
230. Page 2610, line 8, to page 2651, line 21.
231. Page 2663, line 25, to page 2665, line 11.
232. Page 2747, line 9, to page 2748, line 19.
233. Page 2759, line 22, to page 2760, line 13.
234. Page 2762, line 22, to page 2763, line 20.
235. Page 2767, line 4, to page 2769, line 21.
236. Page 2780, line 9, to page 2781, line 5.
237. Page 2787, line 4, to page 2788, line 9.
238. Page 2880, line 11, to page 2882, line 18.
239. Page 2887, line 9, to page 2890, line 20.
240. Page 2890, line 25, to page 2892, line 18.
241. Page 2893, lines 2 to 13.
242. Page 2894, line 10, to page 2896, line 2.
243. Page 2898, line 12, to page 2899, line 18.
244. Page 2902, line 5, to page 2903, line 13.
245. Page 2916, line 15, to page 2999, line 13.
246. Page 2975, line 15, to page 2976, line 10.
247. Page 2977, line 10, to page 2980, line 8.
248. Page 2984, line 20, to page 2985, line 18.
249. Page 2994, line 5, to page 2995, line 2.
250. Page 3003, lines 8 to 23.
251. Page 3004, lines 9 to 25.
252. Page 3016, lines 9 to 24.
253. Page 3018, line 22, to page 3019, line 23.
254. Page 3069, "Q. I show you a letter", to page 3070,  
"Res. Ex. 24".
255. Page 3075 to page 3080.
256. Page 3082, "Q. You also admitted, I believe," to page  
3083, "what the record shows":
257. Page 3103, "Mr. Martin: That is objected to" to  
"(Question read.)"
258. Page 3160, "Mr. Martin: That is objected to" to  
"(The question was read)", page 3163.

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259. Page 3214, last line, to "Mr. Albert: Very well," page 3216.
260. Page 3260, "Mr. Martin: I would like to", to page 3263, "Examiner Bennett: That is all right."
261. Page 3264, "Mr. Martin: I object to it", to page 3267, "I personally did not see the telegram, that is all."
262. Page 3280, "Q. Did you also read", to page 3282, "I want to show it to the witness."
263. Page 3285, "Mr. Albert: May I explain", to page 3287, "Examiner Bennett: All right."
264. Page 3321 to page 3322.
- 13955 265. Page 3326, line 2, to page 3327, line 16.
266. Page 3333, line 8, to page 3334, line 4.
267. Page 3360, line 25, to page 3362, line 9.
268. Page 3363, line 8, to page 3364, line 25.
269. Page 3369.
270. Page 3371, line 9, to page 3373, line 3.
271. Page 3390, line 15, to page 3392, line 25.
272. Page 3406, line 9, to page 3410, line 6.
273. Page 3484, line 6, to page 3485, line 22.
274. Page 3486, line 20, to page 3488, line 10.
275. Page 3496, lines 11 to 16.
276. Page 3497, line 21, to page 3502, line 4.
277. Page 3518 to page 3521, line 10.
278. Page 3522, "Mr. Martin: Now, if your Honor please," to page 3524, line 19.
- 13956 279. Page 3578, line 4, to page 3581, line 8.
280. Page 3601, line 7, to page 3602, line 11.
281. Page 3602, line 25, to page 3603, line 21.
282. Page 3610, line 14, to page 3611, line 13.
283. Page 3630, lines 10 to 25.
284. Page 3631, line 15, to page 3632, line 8.
285. Page 3635, line 8, to page 3637, line 2.
286. Page 3638, line 18, to page 3641, line 5.

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287. Page 3645, line 2, to page 3646, line 6.
288. Page 3651, line 19, to page 3653, line 12.
289. Page 3653, line 16, to page 3654, line 2.
290. Page 3682, line 16, to page 3683, line 14.
291. Page 3718, lines 3 to 22.
292. Page 3732, line 21, to page 3737, line 5.
293. Page 3745, line 24, to page 3747, line 18.
294. Page 3750, line 4, to page 3751, line 9.
295. Page 3763, lines 7 to 20.
296. Page 3764, line 17, to page 3765, line 22.
297. Page 3767, lines 1 to 18.
298. Page 3768, line 13, to page 3769, line 8.
299. Page 3774, line 13, to page 3775, line 22.
300. Page 3778, line 20, to page 3779, line 25.
301. Page 3785, line 12, to page 3786, line 11.
302. Page 3787, line 8, to page 3788, line 13.
303. Page 3799, line 19, to page 3801, line 10.
304. Page 3804, line 3, to page 3806, line 16.
305. Page 3806, line 25, to page 3810, line 10.
306. Page 3814, line 2, to page 3816, line 7.
307. Page 3843, line 7, to page 3845, line 2.
308. Page 3845, line 14, to page 3847, line 1.
309. Page 3849, lines 1 to 24.
310. Page 3852, line 12, to page 3854, line 20.
311. Page 3867, line 12, to page 3868, line 10.
312. Page 3868, line 17, to page 3869, line 4.
313. Page 3870, line 11, to page 3871, line 18.
314. Page 3874, line 19, to page 3875, line 17.
315. Page 3878, lines 9 to 24.
316. Page 3879, line 5, to page 3880, line 13.
317. Page 3880, line 20, to page 3881, line 11.
318. Page 3881, line 24, to page 3882, line 19.
319. Page 3883, line 14, to page 3898, line 14.
320. Page 3909, line 12, to page 3910, line 8.
321. Page 3934, lines 8 to 22.
322. Page 3971, line 1, to page 3988, line 5.

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- 323. Page 4047, lines 2 to 25.
- 324. Page 4071, line 17, to page 4072, line 17.
- 325. Page 4077, line 15, to page 4082, line 1.
- 326. Page 4100, line 12, to page 4101, line 22.
- 327. Page 4103, lines 5 to 25.
- 328. Page 4138, line 3, to page 4139, line 13.
- 329. Page 4150, line 23, to page 4152, line 3.
- 330. Page 4154, line 18, to page 4162, line 5.
- 331. Page 4162, line 21, to page 4163, line 8.
- 332. Page 4183, line 5, to page 4202, line 2.
- 333. Page 4210, line 10, to page 4212, line 3.
- 334. Page 4215, line 23, to page 4216, line 25.
- 13961 335. Page 4229, line 15, to page 4230, line 4.
- 336. Page 4259, line 19, to page 4261, line 4.
- 337. Page 4261, line 10, to page 4262, line 21.
- 338. Page 4264, lines 1 to 25.
- 339. Page 4265, line 23, to page 4267, line 21.
- 340. Page 4271, line 5, to page 4272, line 8.
- 341. Page 4273, line 9, to page 4276, line 1.
- 342. Page 4290, lines 1 to 22.
- 343. Page 4299, line 25, to page 4304, line 16.
- 344. Page 4318, line 17, to page 4318, b, line 3.
- 345. Page 4318, c, line 10, to page 4318, d, line 14.
- 346. Page 4318, e, line 7, to page 4320, line 25.
- 347. Page 4325, line 13, to page 4327, line 6.
- 348. Page 4331, line 7, to page 4332, line 22.
- 13962 349. Page 4333, line 23, to page 4334, line 25.
- 350. Page 4337, line 10, to page 4339, line 22.
- 351. Page 4345, line 18, to page 4346, line 5.
- 352. Page 4352, line 2, to page 4353, line 16.
- 353. Page 4359, "Q. What effect did the sale of a copy  
to page 4360, "and make it more specific for you"
- 354. Page 4363, "Mr. Haycraft: Mr. Examiner, I wish at  
this time to inform you", to page 4365, "All right  
proceed, Mr. Albert".

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355. Page 4370, entire page, to page 4372, "(Record read by the reporter)".

356. Page 4376, "Examiner Bennett: Try to avoid going over matter", to page 4377, "Examiner Bennett: Any further examination".

357. Page 4388, "Mr. Keller: It is already in evidence", to page 4390, "Mr. Keller: That is right".

358. Page 4400, "Mr. Albert: Now, if it please the Court", to page 4404, "(Question read)".

359. Page 4407, "Examiner Bennett: There seems to be", to page 4408, "Examiner Bennett: It may be received".

360. Page 4443, "In addition, I believe", to bottom of page 4444.

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361. Page 4457, "Mr. Albert: That is objected to", line 23.

362. Page 4466, "Mr. Haycraft: It is now 4.30", to page 4472.

363. Page 4509, line 2, to page 4512, line 3.

364. Page 4515, line 5, to page 4516, line 5.

365. Page 4520, line 15, to page 4521, line 7.

366. Page 4523, line 12, to page 4524, line 4.

367. Page 4531, line 24, to page 4533, line 5.

368. Page 4534, lines 1 to 18.

369. Page 4540, line 1, to page 4541, line 19.

370. Page 4542, line 18, to page 4543, line 9.

371. Page 4556, line 23, to page 4558, line 16.

372. Page 4562, line 18, to page 4565, line 6.

373. Page 4568, line 21, to page 4569, line 25.

374. Page 4571, line 21, to page 4572, line 19.

375. Page 4581, line 10, to page 4583, line 19.

376. Page 4599, line 7, to page 4603, line 17.

377. Page 4616, line 22, to page 4627, line 14.

378. Page 4656, line 12, to page 4657, line 15.

379. Page 4661, lines 6 to 24.

380. Page 4708, line 1, to page 4712, line 19.

381. Page 4765, line 21, to page 4767, line 4.

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- 382. Page 4769, line 9, to page 4781, line 25.
- 383. Page 4803, lines 11 to 23.
- 384. Page 4825, line 12, to page 4872, line 24, identifying Exhibits 602 to 694, inclusive.
- 385. Page 4878, line 15, to page 4914, line 5.
- 386. Page 4914, line 15, to page 4915, line 25.
- 387. Page 4924, line 11, to page 4925, line 9.
- 388. Page 4946, line 14, to page 4948, line 20.
- 389. Page 4952, line 12, to page 4954, line 18.
- 390. Page 4955, line 25, to page 4957, line 5.
- 391. Page 5012, line 17, to page 5013, line 22.
- 392. Page 5019, lines 6 to 25.
- 393. Page 5135, line 6, to page 5136, line 23.
- 394. Page 5142, line 11, to page 5146, line 9.
- 395. Page 5203, line 9, to page 5211, line 25.
- 396. Page 5216, line 24, to page 5218, line 5.
- 397. Page 5224, line 25, to page 5226, line 2.
- 398. Page 5227, line 22, to page 5228, line 16.
- 399. Page 5238, line 1, to page 5239, line 10.
- 400. Page 5246, line 16, to page 5248, line 12.
- 401. Page 5261, line 16, to page 5262, line 13.
- 402. Page 5265, line 9, to page 5266, line 9.
- 403. Page 5272, line 25, to page 5274, line 22.
- 404. Page 5276, line 8, to page 5277, line 2.
- 405. Page 5293, line 7, to page 5311, line 25.
- 406. Page 5312, line 7, to page 5314, line 2.
- 407. Page 5347, line 24, to page 5348, line 21.
- 408. Page 5353, line 23, to page 5354, line 16.
- 409. Page 5355, line 23, to page 5357, line 25.
- 410. Page 5358, line 10, to page 5359, line 25.
- 411. Page 5365, lines 2 to 22.
- 412. Page 5395, line 23, to page 5400, line 25.
- 413. Page 5408, line 14, to page 5409, line 6.
- 414. Page 5422, line 5, to page 5425, line 4.
- 415. Pages A, B, C, D and E, preceding page 5426.
- 416. Page 5427, line 1, to page 5429, line 25.

417. Page 5432, line 14, to page 5434, line 5.
418. Page 5458, line 19, to page 5461, line 25.
419. Page 5463, line 20, to page 5464, line 13.
420. Page 5468, line 20, to page 5469, line 17.
421. Page 5474, line 11, to page 5476, line 1.
422. Page 5490, line 22, to page 5491, line 24.
423. Page 5505, line 15, to page 5507, line 25.
424. Page 5522, line 1, to page 5544, line 15.
425. Pages A, B, C, D and E, preceding page 5545.
426. Page 5553, line 8, to page 5554, line 8.
427. Page 5559, line 8, to page 5560, line 4.
428. Page 5565, lines 6 to 25.
429. Page 5566, line 19, to page 5568, line 10.
430. Page 5569, line 19, to page 5571, line 2.
431. Page 5571, line 17, to page 5576, line 4.
432. Page 5587, line 14, to page 5588, line 16.
433. Page 5600, lines 5 to 19.
434. Page 5605, line 12, to page 5608, line 3.
435. Page 5609, lines 11 to 24.
436. Page 5616, line 6, to page 5617, line 1.
437. Page 5619, lines 1 to 18.
438. Page 5619, line 22, to page 5620, line 13.
439. Page 5628, line 24, to page 5629, line 24.
440. Page 5631, line 2, to page 5635, line 21.
441. Page 5637, line 20, to page 5658, line 25.
442. Page 5661, line 1, to page 5666, line 10.
443. Page 5682, lines 4 to 24.
444. Page 5683, line 20, to page 5685, line 1.
445. Page 5687, line 24, to page 5690, line 24.
446. Page 5703, line 25, to page 5704, line 23.
447. Page 5705, line 13, to page 5707, line 7.
448. Page 5708, lines 7 to 22.
449. Page 5723, line 9, to page 5724, line 16.
450. Page 5749, line 24, to page 5753, line 18.
451. Page 5755, lines 1 to 16.
452. Page 5759, line 9, to page 5761, line 10.

453. Page 5762, line 15, to page 5763, line 17.  
 454. Page 5765, lines 3 to 24.  
 455. Page 5767, line 7, to page 5769, line 9.  
 456. Page 5770, line 9, to page 5772, line 6.  
 457. Page 5776, line 3, to page 5778, line 3.  
 458. Page 5779, line 21, to page 5782, line 20.  
 459. Page 5783, line 9, to page 5788, line 25.  
 460. Page 5793, line 8, to page 5794, line 24.  
 461. Page 5797, line 6, to page 5799, line 1.  
 462. Page 5801, line 6, to page 5802, line 15.  
 463. Page 5804, line 16, to page 5805, line 19.  
 464. Page 5806, lines 6 to 20.  
 13973 465. Page 5807, lines 1 to 9.  
 466. Page 5807, line 12, to page 5808, line 18.  
 467. Page 5809, lines 1 to 23.  
 468. Page 5810, line 2, to page 5814, line 4.  
 469. Page 5814, line 23, to page 5815, line 17.  
 470. Page 5818, line 2, to page 5820, line 11.  
 471. Page 5820, line 22, to page 5821, line 5.  
 472. Page 5823, line 1, to page 5828, line 8.  
 473. Page 5829, line 20, to page 5830, line 5.  
 474. Page 5830, line 17, to page 5831, line 4.  
 475. Page 5835, line 14, to page 5836, line 24.  
 476. Page 5838, line 10, to page 5841, line 6.  
 477. Page 5842, line 9, to page 5846, line 11.  
 478. Page 5852, line 1, to page 5853, line 2.  
 479. Page 5854, line 4, to page 5855, line 17.  
 13974 480. Page 5856, line 23, to page 5858, line 10.  
 481. Page 5860, line 2, to page 5862, line 21.  
 482. Page 5863, line 9, to page 5864, line 13.  
 483. Page 5867, lines 3 to 25.  
 484. Page 5878, line 19, to page 5880, line 24.  
 485. Page 5881, line 24, to page 5887, line 6.  
 486. Page 5888, line 21, to page 5890, line 10.  
 487. Page 5892, line 6, to page 5893, line 18.  
 488. Page 5894, line 15, to page 5895, line 16.

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89. Page 5896, line 11, to page 5897, line 21.
90. Page 5900, lines 1 to 21.
91. Page 5905, lines 4 to 18.
92. Page 5907, line 15, to page 5909, line 18.
93. Page 5913, lines 3 to 24.
94. Page 5914, line 20, to page 5918, line 12.
95. Page 5933, lines 2 to 20.
96. Page 5933, line 23, to page 5936, line 1.
97. Page 5936, line 19, to page 5937, line 11.
98. Page 5938, line 21, to page 5943, line 19.
99. Page 5948, line 5, to page 5951, line 15.
100. Page 5957, line 25, to page 5960, line 11.
101. Page 5963, line 18, to page 5964, line 20.
102. Page 5971, line 24, to page 5972, line 25.
103. Page 5974, line 4, to page 5983, line 19.
104. Page 5984, lines 2 to 15.
105. Page 5984, line 19, to page 5986, line 3.
106. Page 5994, line 2, to page 5995, line 1.
107. Page 5995, line 13, to page 5996, line 4.
108. Page 5996, line 11, to page 5997, line 24.
109. Page 5999, line 17, to page 6000, line 19.
110. Page 6001, line 14, to page 6002, line 12.
111. Page 6006, line 19, to page 6008, line 23.
112. Page 6013, lines 6 to 25.
113. Page 6015, line 5, to page 6019, line 10.
114. Page 6020, lines 2 to 24.
115. Page 6022, line 11, to page 6029, line 10.
116. Page 6037, line 5, to page 6041, line 21.
117. Page 6044, line 6, to page 6045, line 25.
118. Page 6053, line 7, to page 6056, line 5.
119. Page 6065, line 21, to page 6071, line 9.
120. Page 6072, line 1, to page 6085, line 8.
121. Page 6090, line 21, to page 6091, line 10.
122. Page 6092, line 11, to page 6093, line 7.
123. Page 6094, line 7, to page 6099, line 4.
124. Page 6102, line 3, to page 6105, line 16.

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- 525. Page 6114, line 15, to page 6117, line 5.
- 526. Page 6120, line 9, to page 6122, line 22.
- 527. Page 6126, line 22, to page 6128, line 7.
- 528. Page 6130, line 17, to page 6131, line 19.
- 529. Page 6132, line 20, to page 6133, line 16.
- 530. Page 6135, line 14, to page 6136, line 19.
- 531. Page 6140, lines 7 to 23.
- 532. Page 6142, line 13, to page 6146, line 16.
- 533. Page 6147, line 14, to page 6149, line 11.
- 534. Page 6149, line 23, to page 6150, line 18.
- 535. Page 6151, line 22, to page 6152, line 23.
- 536. Page 6153, line 8, to page 6154, line 23.
- 537. Page 6157, line 21, to page 6161, line 14.
- 538. Page 6167, line 25, to page 6168, line 16.
- 539. Page 6172, line 14, to page 6175, line 1.
- 540. Page 6175, line 4, to page 6179, line 25.
- 541. Page 6180, line 8, to page 6182, line 6.
- 542. Page 6186, line 3, to page 6187, line 20.
- 543. Page 6190, line 7, to page 6191, line 21.
- 544. Page 6192, line 25, to page 6194, line 18.
- 545. Page 6195, line 13, to page 6196, line 24.
- 546. Page 6197, line 5, to page 6198, line 23.
- 547. Page 6208, line 15, to page 6209, line 10.
- 548. Page 6213, line 21, to page 6215, line 15.
- 549. Page 6217, line 13, to page 6221, line 11.
- 550. Page 6222, line 7, to page 6223, line 2.
- 551. Page 6228, line 10, to page 6231, line 6.
- 552. Page 6232, line 2, to page 6246, line 18.
- 553. Page 6246, line 21, to page 6247, line 18.
- 554. Page 6249, line 2, to page 6250, line 8.
- 555. Page 6251, line 1, to page 6252, line 15.
- 556. Page 6254, lines 1 to 17.
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- 558. Page 6258, line 22, to page 6261, line 19.
- 559. Page 6262, line 8, to page 6271, line 8.
- 560. Page 6273, line 3, to page 6284, line 19.

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561. Page 6287, line 20, to page 6290, line 14.
562. Page 6290, line 20, to page 6293, line 10.
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564. Page 6300, lines 8 to 25.
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566. Page 6303, line 23, to page 6305, line 4.
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568. Page 6317, line 9, to page 6318, line 15.
569. Page 6323, line 21, to page 6325, line 4.
570. Page 6335, line 23, to page 6337, line 21.
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572. Page 6351, line 21, to page 6352, line 19.

573. Page 6352, line 22, to page 6362, line 7.

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574. Page 6365, line 3, to page 6365, line 25.

575. Page 6368, line 7, to page 6371, line 23.

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578. Page 6380, line 9, to page 6384, line 7.

579. Page 6384, line 17, to page 6385, line 25.

580. Page 6388, line 24, to page 6393, line 4.

581. Page 6394, lines 1 to 22.

582. Page 6395, lines 1 to 16.

583. Page 6398, line 2, to page 6398a, line 3.

583. Page 6398a, lines 6 to 16.

584. Page 6399, line 6, to page 6400, line 6.

585. Page 6400, lines 8 to 24.

586. Page 6402, line 21, to page 6404, line 15.

587. Page 6405, line 3, to page 6409, line 25.

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588. Page 6410, line 21, to page 6412, line 7.

589. Page 6412, lines 11 to 22.

590. Page 6412, line 25, to page 6415, line 17.

591. Page 6418, line 7, to page 6431, line 24.

592. Page 6434, line 3, to page 6436, line 8.

593. Page 6441, line 20, to page 6442, line 19.

594. Page 6444, line 7, to page 6451, line 18.

595. Page 6452, line 15, to page 6454, line 17.

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- 596. Page 6456, line 6, to page 6458, line 20.
- 597. Page 6459, line 20, to page 6460, line 20.
- 598. Page 6460, line 25, to page 6463, line 15.
- 599. Page 6464, line 1, to page 6465, line 2.
- 600. Page 6466, line 11, to page 6467, line 23.
- 601. Page 6474, line 17, to page 6475, line 5.
- 602. Page 6475, line 7, to page 6480, line 8.
- 603. Page 6482, line 22, to page 6483, line 25.
- 604. Page 6485, line 5, to page 6486, line 19.
- 605. Page 6488, line 3, to page 6491, line 19.
- 606. Page 6497, line 10, to page 6498, line 18.
- 607. Page 6500, line 22, to page 6508, line 17.
- 608. Page 6509, line 15, to page 6557, line 15.
- 609. Page 6558, line 1, to page 6563, line 4.
- 610. Page 6563, line 16, to page 6565, line 15.
- 611. Page 6566, line 11, to page 6570, line 15.
- 612. Page 6571, line 11, to page 6573, line 4.
- 613. Page 6574, line 5, to page 6576, line 5.
- 614. Page 6584, line 24, to page 6596, line 18.
- 615. Page 6599, line 19, to page 6600, line 17.
- 616. Page 6601, line 8, to page 6602, line 15.
- 617. Page 6603, line 3, to page 6605, line 24.
- 618. Page 6606, line 8, to page 6607, line 17.
- 619. Page 6610, line 6, to page 6611, line 22.
- 620. Page 6615, line 20, to page 6616, line 19.
- 621. Page 6618, line 19, to page 6621, line 10.
- 622. Page 6623, line 1, to page 6670, line 4.
- 623. Page 6673, line 14, to page 6676, line 3.
- 624. Page 6676, line 21, to page 6680, line 4.
- 625. Page 6684, line 10, to page 6685, line 25 (Women's Wear Article on red card out).
- 626. Page 6687, line 20, to page 6692, line 22.
- 627. Page 6693, line 9, to page 6707, line 16.
- 628. Page 6708, line 20, to page 6712, line 11.
- 629. Page 6712, line 25, to page 6717, line 24.

630. Page 6743, "Q. Mr. Bergdahl, based upon your experience", to page 6749, "(Question as amended read as follows)".
631. Page 6756, "Mr. Weisman: What is 'the laws of the land'", to page 6759, "However, you may begin and restate that if you like".
632. Page 6760, "Q. With the same foundation question", to page 6764, "(There was a short recess taken)".
633. Page 6772, "Mr. Weisman: May I have that read", to page 6776, "Examiner Averill: Proceed to do so".
634. Page 6782, "Mr. Haycraft: I object to that question", to page 6783, "Examiner Averill: All right, go ahead". 13988
635. Page 6788, "Q. Professor Nystrom further says", to page 6791, "and then you may answer".
636. Page 6795, "Mr. Haycraft: That is objected to", to page 6797, "if you cannot answer it, say so".
637. Page 6797, "Examiner Averill: What you meant to say", to page 6798, "they were in business and making a living".
638. Page 6810, "Mr. Weisman: Well, as I understood it", to page 6812, "2 o'clock P. M. of the same day".
639. Page 6829, "Examiner Averill: Why do you say that", to page 6831, "Examiner Averill: And let us try to get along".
640. Page 6832, "Mr. Haycraft: Same objection", to page 6835, "the best that he can". 13989
641. Page 6837, "Mr. Haycraft: Objected to", to page 6839, "Examiner Averill: Yes".
642. Page 6840, "Examiner Averill: He has already answered", to "we might have in connection with our trade protection", to page 6849, line 15.
643. Page 6867, "Mr. Martin: Apparently it is in tweed", to bottom of page 6872.

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*Stipulation as to Matter Omitted.*

644. Page 6873, "Q. Well, tell us first", to page 6877, "and that is making it very plain indeed".
645. Page 6886, "Mr. Weisman: I ask that the latter part", to page 6894, "A. About 50 million roughly".
646. Page 6896, "Q. When you gave orders", to page 6897, "I am not going to".

647. Page 6904 to end page 6905.

648. Page 6908, line 23, to page 6911, line 17.

649. Page 6912, line 16, to page 6915, line 16.

650. Page 6923, line 20, to page 6924, line 16.

651. Page 6928, lines 2 to 22.

652. Page 6930, line 10, to page 6931, line 21.

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653. Page 6932, line 2, to page 6933, line 21.

654. Page 6937, line 24, to page 6938, line 9.

655. Page 6938, line 21, to page 6940, line 19.

656. Page 6945, line 12, to page 6949, line 22.

667. Page 6958, lines 3 to 15.

668. Page 6961, lines 2 to 13.

669. Page 6963, line 11, to page 6965, line 13.

670. Page 6967, line 6, to page 6968, line 14.

671. Page 6978, line 17, to page 6980, line 13.

672. Page 6982, line 1, to page 6983, line 14.

673. Page 6984, line 12, to page 6985, line 3.

674. Page 6991, line 1, to page 6992, line 2.

675. Page 6992, line 12, to page 6993, line 16.

676. Page 6995, line 19, to page 7000, line 5.

677. Page 7005, line 16, to page 7008, line 3.

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678. Page 7008, line 9, to page 7009, line 8.

679. Page 7010, lines 8 to 25.

680. Page 7011, line 5, to page 7012, line 5.

681. Page 7015, line 3, to page 7016, line 24.

682. Page 7017, line 14, to page 7019, line 18.

683. Page 7021, line 19, to page 7024, line 11.

684. Page 7026, line 7, to page 7030, line 17.

685. Page 7033, line 7, to page 7034, line 6.

686. Page 7035, lines 3 to 24.

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687. Page 7036, lines 4 to 19.
688. Page 7040, line 23, to page 7041, line 24.
689. Page 7044, line 13, to page 7045, line 2.
690. Page 7045, line 18, to page 7046, line 7.
691. Page 7048, line 5, to page 7049, line 16.
692. Page 7057, line 5, to page 7059, line 23.
693. Page 7064, lines 1 to 10.
694. Page 7072, line 15, to page 7074, line 7.
695. Page 7078, lines 6 to 23.
696. Page 7080, line 15, to page 7081, line 3.
697. Page 7082, line 24, to page 7083, line 22.
698. Page 7086, line 20, to page 7087, line 20.
699. Page 7093, line 16, to page 7095, line 12.
700. Page 7101, line 3, to page 7108, line 6.
701. Page 7111, line 16, to page 7113, line 19.
702. Page 7114, line 20, to page 7115, line 2.
703. Page 7119, lines 11 to 23.
704. Page 7121, line 2, to page 7124, line 3.
705. Page 7143, line 16, to page 7144, line 19.
706. Page 7146, line 8, to page 7148, line 9.
707. Page 7149, line 19, to page 7153, line 18.
708. Page 7155, line 2, to page 7158, line 1.
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710. Page 7160, line 1, to page 7162, line 4.
711. Page 7164, line 14, to page 7165, line 6.
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720. Page 7198, line 13, to page 7198, line 25.
721. Page 7199, line 24, to page 7202, line 16.
722. Page 7203, line 16, to page 7204, line 4.

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- 723. Page 7207, line 12, to page 7208, line 14.
- 724. Page 7209, line 16, to page 7210, line 5.
- 725. Page 7215, lines 2 to 25.
- 726. Page 7222, line 9, to page 7223, line 9.
- 727. Page 7226, line 12, to page 7227, line 15.
- 728. Page 7228, line 22, to page 7229, line 8.
- 729. Page 7229, line 21, to page 7237, line 11.
- 730. Page 7248, line 24, to page 7250, line 20.
- 731. Page 7259, line 17, to page 7265, line 9.
- 732. Page 7269, line 21, to page 7270, line 13.
- 733. Page 7273, line 23, to page 7275, line 4.
- 734. Page 7275, line 8, to page 7276, line 10.
- 735. Page 7276, line 14, to page 7277, line 4.
- 736. Page 7277, lines 8 to 17.
- 737. Page 7279, line 14, to page 7280, line 3.
- 738. Page 7283, line 23, to page 7285, line 17.
- 739. Page 7290, line 15, to page 7291, line 2.
- 740. Page 7292, line 6, to page 7295, line 4.
- 741. Page 7297, line 14, to page 7300, line 19.
- 742. Page 7311, line 13, to page 7312, line 11.
- 743. Page 7312, line 15, to page 7313, line 6.
- 744. Page 7315, line 25, to page 7316, line 25.
- 745. Page 7317, line 25, to page 7318, line 10.
- 746. Page 7318, line 16, to page 7319, line 13.
- 747. Page 7323, line 9, to page 7324, line 12.
- 748. Page 7325, lines 2 to 12.
- 749. Page 7325, line 19, to page 7326, line 4.
- 750. Page 7326, line 21, to page 7328, line 4.
- 751. Page 7340, lines 8 to 19.
- 752. Page 7346, line 20, to page 7348, line 17.
- 753. Page 7349, line 4, to page 7350, line 19.
- 754. Page 7358, line 13, to page 7359, line 13.
- 755. Page 7362, line 2, to page 7363, line 9.
- 756. Page 7364, line 8, to page 7365, line 4.
- 757. Page 7367, line 1, to page 7368, line 3.
- 758. Page 7373, lines 6 to 16.
- 759. Page 7374, line 24, to page 7375, line 17.

760. Page 7383, line 10, to page 7384, line 12.  
761. Page 7386, line 13, to page 7388, line 11.  
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763. Page 7391, line 17, to page 7392, line 8.  
764. Page 7396, line 17, to page 7398, line 5.  
765. Page 7398, line 13, to page 7399, line 25.  
766. Page 7406, lines 17 to 25.  
767. Page 7408, line 7, to page 7409, line 7.  
768. Page 7412, line 16, to page 7413, line 9.  
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770. Page 7421, line 21, to page 7422, line 14.  
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774. Page 7432, line 10, to page 7433, line 11.  
775. Page 7435, line 28, to page 7436, line 6.  
776. Page 7439, line 19, to page 7442, line 2.  
777. Page 7443, line 11, to page 7444, line 17.  
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780. Page 7447, line 14, to page 7448, line 9.  
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784. Page 7509, line 11, to page 7511, line 10.  
785. Page 7523, lines 10 to 24.  
786. Page 7530, line 25, to page 7532, line 25.  
787. Page 7533, lines 5 to 21.  
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789. Page 7548, line 2, to page 7549, line 22.  
790. Page 7554, line 18, to page 7556, line 25.  
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793. Page 7578, line 8, to page 7580, line 7.  
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797. Page 7628, lines 2 to 12.
798. Page 7635, line 3, to page 7636, line 6.
799. Page 7637, line 9, to page 7638, line 6.
800. Page 7648, line 18, to page 7649, line 19.
801. Page 7654, line 12, to page 7655, line 21.
802. Page 7664, line 15, to page 7666, line 5.
803. Page 7668, line 16, to page 7671, line 5.
804. Page 7679, line 17, to page 7680, line 15.
805. Page 7702, line 25, to page 7705, line 4.
806. Page 7705, line 9, to page 7710, line 2.
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814. Page 7732, line 9, to page 7733, line 9.
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826. Page 7786, line 15, to page 7787, line 23.
827. Page 7788, lines 1 to 9.
828. Page 7789, lines 4 to 25.
829. Page 7790, line 23, to page 7792, line 3.
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831. Page 7796, line 1, to page 7798, line 10.
832. Page 7802, line 19, to page 7803, line 9.
833. Page 7809, line 7, to page 7813, line 16.

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- 834. Page 7814, line 15, to page 7818, line 25.
- 835. Page 7822, line 6, to page 7823, line 14.
- 836. Page 7830, line 9, to page 7833, line 14.
- 837. Page 7839, line 21, to page 7840, line 8.
- 838. Page 7845, lines 4 to 18.
- 839. Page 7845, line 21, to page 7846, line 12.
- 840. Page 7849, lines 3 to 23.
- 841. Page 7852, line 16, to page 7860, line 23.
- 842. Page 7863, line 17, to page 7864, line 20.
- 843. Page 7867, lines 4 to 15.
- 844. Page 7875, line 10, to page 7877, line 22.
- 845. Page 7878, line 14, to page 7879, line 7.
- 846. Page 7881, line 4, to page 7882, line 7.
- 847. Page 7882, line 14, to page 7886, line 2.
- 848. Page 7916, line 12, to page 7918, line 10.
- 849. Page 7919, line 16, to page 7921, line 2.
- 850. Page 7924, line 6, to page 7926, line 18.
- 851. Page 7928, line 10, to page 7929, line 13.
- 852. Page 7929, line 17, to page 7929, line 25.
- 853. Page 7933, line 21, to page 7935, line 2.
- 854. Page 7935, lines 17 to 25.
- 855. Page 7936, line 16, to page 7938, line 11.
- 856. Page 7938, line 22, to page 7942, line 18.
- 857. Page 7950, line 15, to page 7953, line 4.
- 858. Page 7954, lines 5 to 17.
- 859. Page 7954, lines 21 to 25.
- 860. Page 7956, lines 2 to 18.
- 861. Page 7957, lines 8 to 24.
- 862. Page 7962, line 5, to page 7963, line 8.
- 863. Page 7965, line 22, to page 7967, line 1.
- 864. Page 7967, line 6, to page 7968, line 12.
- 865. Page 7968, line 17, to page 7971, line 4.
- 866. Page 7971, line 9, to page 7976, line 5.
- 867. Page 7976, line 9, to page 7980, line 18.
- 868. Page 7980, line 23, to page 7983, line 17.
- 869. Page 7983, line 22, to page 7984, line 8.
- 870. Page 8004, line 23, to page 8008, line 3.

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- 871. Page 8026, line 6, to page 8027, line 17.
- 872. Page 8027, line 21, to page 8031, line 3.
- 873. Page 8031, line 11, to page 8032, line 19.
- 874. Page 8032, line 24, to page 8033, line 22.
- 875. Page 8037, line 1, to page 8044, line 20.
- 876. Page 8045, line 1, to page 8065, line 11.
- 877. Page 8070, line 13, to page 8071, line 14.
- 878. Page 8071, line 18, to page 8072, line 11.
- 879. Page 8072, line 15, to page 8073, line 6.
- 880. Page 8073, line 10, to page 8074, line 11.
- 881. Page 8074, line 15, to page 8076, line 1.
- 882. Page 8076, line 7, to page 8082, line 12.
- 883. Page 8083, line 1, to page 8084, line 11.
- 884. Page 8085, line 1, to page 8086, line 14.
- 885. Page 8087, line 1, to page 8129, line 21.
- 886. Page 8154 to page 8158.
- 887. Page 8175, line 16, to page 8176, line 7.
- 888. Page 8201, line 1, to page 8207, line 25.

14009

Dated, Washington, D. C., March 5th, 1940.

W. T. KELLEY,

Chief Counsel for Federal Trade Commission.

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[fol. 4671] UNITED STATES CIRCUIT COURT OF APPEALS FOR  
THE SECOND CIRCUIT, OCTOBER TERM, 1939

No. 312

(Argued June 4, 1940. Decided July 22, 1940)

FASHION ORIGINATORS GUILD OF AMERICA, INC., et al.,  
Petitioners,  
against

FEDERAL TRADE COMMISSION, Respondent

On petition to review a "cease and desist" order of the  
Federal Trade Commission

Before L. Hand, Augustus N. Hand and Chase, Circuit  
Judges

Milton C. Weisman for the petitioners.  
Everett F. Haycraft for the respondent.

L. HAND, C. J.:

This case comes before us on petition to review an order of the Federal Trade Commission, directing the petitioners to "cease and desist" from certain "unfair trade practices" in interstate commerce. The principal respondent below, the Fashion Originators Guild, and its members sell medium [fol. 4672] and high priced women's dresses to retailers, who select from designs exhibited in show rooms in New York City. The members make their dresses from what they assert to be "original designs" of their own, to protect which the Guild was organized in 1932, though the designs are neither patented nor copyrighted. About a fourth of all women's dresses made in this country sell for more than \$10.75, and the Guild (disregarding whether they were members for the whole year) in 1935 sold 42% of these; their sales of cheaper dresses were less, though in the next lowest grade, \$6.75 to \$10.75, they were 10% of the total sales in that class. (The Commission found much higher percentages than these; but for the purposes of the case it is not necessary to do more than to take the Guild's own figures.) In order to prevent what the Guild calls "style piracy," that is, the copying of their "original designs," the Guild and

its members refuse in combination to sell any dresses to retailers who purchase, or order to be manufactured, dresses which the Guild finds embody copies of its designs. For that purpose it has set up a "Piracy Committee" which decides which of the designs "registered" by its members, are "originals"; it employs shoppers in various parts of the country who visit the shops of retailers and report delinquents; if a retailer is found to be selling "pirated designs," he must stop doing so, or he will get no more dresses of any sort from the Guild; nor will he be allowed to see the designs exhibited in its New York show rooms. Retailers who coöperate with the Guild must agree to accept the decision of the "Piracy Committee," and must return to sellers any dresses that have been "pirated"; they must also agree to abide by the Guild's regulations. Furthermore, in their sales they must warrant to the customers that the designs of the dresses they sell have not been "pirated." The Guild keeps a card-index in which it enters upon red cards the names of those retailers who fail in any of these [fol. 4673] regards. It also maintains a group known as the "Textile Affiliates or Associates" whose members register textile designs with the "National Federation of Textiles," and the dressmaker members of the Guild agree that they will not buy "unregistered" fabrics; conversely, textile members of the Guild agree to sell only to dressmakers who are parties to the combination. About twelve thousand retailers had signed the agreement by the end of the year 1935, and were coöperating with the Guild. Besides the Guild proper, several other subsidiary organizations were made parties to the proceeding, as well as their officers and members and those of the Guild: it is not necessary, however, to describe the relations of the subsidiaries to the parent. The Commission, having found the foregoing facts, made an order appropriate to break up the combination, which the respondents petitioned to review.

The findings are supported by an abundance of evidence and are indisputable; they do not go beyond the conceded purposes of the Guild, which does not indeed deny them, but on the contrary seeks to justify the combination. It says that the sanctions which it imposes were necessary to protect the industry as a whole from "demoralization" and the "property" of its members from appropriation. In great detail it offered to prove what were the results of allowing "style piracy" to continue; how disastrous it was to all

those in the business—manufacturers, retailers and customers—how “style pirates” in some instances gained access to their designs by bribery, burglary and other crimes; how the Guild had benefited the whole industry by the elimination of such evil practices. The Commission refused to receive any evidence of the kind; it held that the combination was unlawful per se; thereby, by implication ruling that even though the combined interests of all those affected made “style piracy” an evil, the manufacturers could not lawfully unite to suppress it by the means employed.

[fol. 4674] At the outset a preliminary question arises which we must dispose of before we proceed to the merits. The Commission asks us not to consider the proffered evidence on the ground that the Guild’s only remedy was under § 5 of the Act; that is, having failed to “apply to the court for leave to adduce additional evidence”, it lost its only opportunity to question or correct any ruling made during the hearing. This argument rests upon an obvious misunderstanding of the section, and would incidentally result in a procedure that would greatly hamper, if it did not destroy, the effectiveness of the Commission itself. Section five is not directed to the correction of errors committed by the Commission during its proceedings or at any other time; it is analogous to a motion for a new trial upon newly discovered evidence. This appears from its very language, which makes it a condition upon the relief granted that “there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Commission.” It is absurd to speak of the exclusion of evidence as a “failure to adduce” it. Moreover, the notion that every time an examiner erroneously rules out evidence at a hearing, the respondent must apply first to the Commission, and then to the court, to correct his error at the risk of forfeiting all right to complain, scarcely needs to be stated to be answered. It contradicts the whole presupposition on which the statute was drawn; i. e., that the court shall have no jurisdiction over the proceedings until the Commission has concluded the case. *Chamber of Commerce v. Federal Trade Commission*, 280 Fed. Rep. 45, 48 (C. C. A. 8). Cf. *Federal Power Commission v. Edison Co.*, 304 U. S. 375, 384, 385; *Jones v. Securities & Exchange Commission*, 79 Fed. (2) 617, 619 (C. C. A. 2). We must therefore decide the case as though the Guild had proved what it offered to prove; that is, we must decide whether its offer was relevant. If it was, the case

must go back for further hearing, because the examiner [fol: 4675] made it plain that he would hear nothing of the kind suggested; and his refusal absolved the Guild from the idle ceremony of swearing witnesses and questioning them. We proceed therefore to the merits.

The author of a design for a dress should be deemed to be on the same footing as the author of a drawing or a picture; and the author of a drawing or a picture has a "common-law property" in its reproduction. *Prince Albert v. Strange*, 1 McN. & G. 25, 43; *Turner v. Robinson*, 10 Ir. Ch. 121; S. C. on appeal, 10 Ir. Ch. 510; *Parton v. Prang*, Fed. Cas. 10, 784; *Oertel v. Wood*, 40 How. Pr. (N. Y.) 10; *Oertel v. Jacoby*, 44 How. Pr. (N. Y.) 179. The controversy as to whether "intellectual property" is lost by "publication" goes back to the Eighteenth Century. The great case of *Donaldson v. Beckett*, 4 Burr. 2408, decided, although by a narrow vote, that it is not so lost; but it also decided that the statute destroyed the "property" itself; and the result in most cases was therefore the same as though publication was an abandonment, since the act applied only to published works. It would follow, if *Donaldson v. Beckett*, supra (4 Burr. 2408) remains law in all that it held; that so far as the statute does not cover such property, "publication" does not destroy it, and that it is therefore perpetual. Mr. Drone in his well-known work (*A Treatise on the Law of Property in Intellectual Productions*, 1879) insists that this is the only proper result (pp. 116-118); but his opinion was obviously much colored by his passionate disapproval of *Donaldson v. Beckett*, supra (4 Burr. 2408) anyway; and we think that the logic, if inexorably applied, is overwhelmed by the practical absurdity of the result. It would certainly be a strangely perverse anomaly that turned the grant of statutory copyright into a detriment to the "author"; yet it would be hard to prove that the statutory remedies conferred made up for the limitation of the monopoly. Omission of property from the act would be a [fol. 4676] bonanza to those who possessed property of that kind. Although it is true that when *Donaldson v. Beckett*, supra (4 Burr. 2408) was decided, there was considerable "intellectual property" which the statute did not cover, we do not believe that the judges would have countenanced such a result, and the implications of *Turner v. Robinson*, supra (10 Ir. Ch. 121, S. C. 10 Ir. Ch. 510) were very clearly to the contrary. When in this country the Constitution (§ 8, Art.

1) gave to Congress power to "secure" to authors the "exclusive Right to their . . . Writings," it was to be only "for limited Times," and did not allow a perpetual copyright. The purpose so disclosed is certainly inconsistent with the assumption that an author—~~notwithstanding publication and full enjoyment of his "common-law property"~~—might maintain his monopoly for "unlimited Times." While we have been unable to discover any case which squarely presented the situation—that is, in which "intellectual property," not covered by the copyright act then in existence, was challenged because of its "publication"—there are plenty of general expressions in the books that the "common-law property" does not survive. *Wheaton v. Peters*, 8 Pet. 591, 658; *Bobbs-Merrill Co. v. Straus*, 210 U. S. 339, 347; *American Tobacco Co. v. Werckmeister*, 207 U. S. 284, 299, 300; *Caliga v. Inter Ocean Newspaper*, 215 U. S. 182, 188; *Werckmeister v. American Lithographic Co.*, 134 Fed. Rep. 321, 324-326 (C. C. A. 2); *Parton v. Prang*, supra, 1277 (Fed. Cas. 10784); *Palmer v. DeWitt*, 47 N. Y. 532, 536-538; *Jewelers Mer. Agency v. Jewelers Publishing Co.*, 155 N. Y. 241; *Oertel v. Jacoby*; supra, p. 188 (44 How. Pr. 179); *Waring v. WDAS Broadcasting Station*, 194 Atl. 631, 635, 636 (Pa.); *Chamber of Commerce v. Wells*, 100 Minn. 205 (111 N. W. 157, 159). We conclude therefore that, regardless of whether the Guild's designs could be registered or not, "publication" of them was a surrender of all its "common-law property" in them.

[fol. 4677] To embody a design in a dress or a fabric, and offer the dress for general sale was such a "publication"; nothing more could be done to bring it into the public demesne. It may be unfortunate—it may indeed be unjust—that the law should not thereafter distinguish between "originals" and copies; but until the copyright law is changed, or until the Copyright Office can be induced to register such designs as copyrightable under the existing statute, they both fall into the public demesne without reserve. *Cheney Bros. v. Doris Silk Corp.*, 35 Fed. (2) 279 (C. C. A. 2). The Guild has therefore no more excuse for preventing other dressmakers from copying one than the other. Indeed, it is conceivable that those who might go to the trouble and expense of seeking out the best-known dressmakers of Paris, and of copying their models and designs—as was frequently done—should assert that by investing so much, they too acquired a "property" in the

designs they brought back which ought to be protected against all but the author himself. We are therefore to judge the Guild as a combination seeking to exclude outsiders from a market to which they have as lawful access as it has itself.

A combined refusal to deal with anyone as a means of preventing him from dealing with a third person, against whom the combined action is directed, is a boycott; and a boycott is *prima facie* unlawful; it must be justified. *United States v. American Livestock Company*, 279 U. S. 435, 437; *Restatement of Torts*, §765 (1). That it can be justified we have indeed very recently said in *Millinery Creators' Guild v. Federal Trade Commission*, 109 Fed. (2) 175, 176; and in the case at bar for example, it would be a lawful form of self-help for members of the Guild to refuse in combination to deal with retailers who knowingly bought dresses of those who had stolen "unpublished" designs; or who got access to them by any other crime, or by a breach of promise not to use them; further, it would be lawful to refuse to [fol. 4678] deal with a retailer who knowingly bought of one who copied "unpublished" designs, without the author's consent, however the copier gained access to them. But that excuse does not extend to a boycott of retailers who buy dresses copied from "published" designs; if that is to be justified, the excuse must be found elsewhere. Many trade combinations which affect competition are lawful, when they are designed to prevent trade "abuses"; they are "reasonable," though perhaps to say so is no more than to state the problem. *Appalachian Coals, Inc. v. United States*, 288 U. S. 344, 374; *Sugar Institute v. United States*, 297 U. S. 553, 598. Certainly it is not true that the lawfulness of every combination depends upon whether it "reasonably" corrects trade "abuses"; there are some combinations that nothing will excuse. The accepted rubric for this is that when the means are unlawful *per se*, the purposes of the confederates will not justify them: *Sugar Institute v. United States*, *supra*, 599 (297 U. S. 553). The most recent example of this is the Supreme Court's reaffirmation of the unconditional illegality of price-fixing, in spite of the probability that the combination in fact benefited the industry. *United States v. Socony-Vacuum Co.*, 309 U. S. —. However grave the industrial disorders, that remedy was not permissible; the industry may restore itself by many devices, but not by all.

The case at bar is not one of price-fixing, and for that reason *United States v. Socony-Vacuum Co.*, supra (309 U. S. —) does not control, for the members of the Guild are free to compete with each other in price or in any other way they choose. The purpose was no more than to exclude "piratical" dressmakers from any share in the market for "original" designs; all else was left open. Success in that purpose might, or might not, result in an increase in price to the consumer, or in that stabilization of prices which *United States v. Socony-Vacuum*, supra (309 U. S. —) [fol. 4679] condemned. Nobody can tell what will be its effect because, although the exclusion of the "piratical" dressmakers will reduce the supply and price is normally a function of supply, it does not appear that the Guild has not a reserve of producing power equal to what is excluded. If so, it may well be able to take up the slack, so to say, created by its efforts, and free competition among the members may keep prices as low and as wayward as they were before. Price fixing is not, however, the only means unlawful per se; the interest of the consumer is not all that determines the "reasonableness" of a contract "in restraint of trade." It is also unlawful to exclude from the market any of those who supply it—assuming that there is no independent reason by virtue of their conduct to justify their exclusion—and it is no excuse for doing so that their exclusion will result in benefits to consumers, or to the producers who remain. *Montague & Co. v. Lowry*, 193 U. S. 38, 47; *Eastern States Retail Lumber Dealers Association v. United States*, 234 U. S. 600, 611; *Binderup v. Pathé Exchange*, 263 U. S. 291, 311, 312; *Anderson v. Shipowners Association*, 272 U. S. 359, 363; *Bedford Cut Stone Co. v. Journeymen Stone Cutter's Association*, 274 U. S. 37, 54; *Paramount Famous Corp. v. United States*, 282 U. S. 30, 43, 44; *United States v. First National Pictures, Inc.*, 282 U. S. 44, 54; *National Harness Association v. Fed. Tr. Comm.*, 268 Fed. Rep. 705, 712 (C. C. A. 6); *Wholesale Grocers Ass'n v. Fed. Tr. Comm.*, 277 Fed. Rep. 657, 663; (C. C. A. 5); *Butterick Publishing Co. v. Fed. Tr. Comm.*, 85 Fed. (2) 522 (C. C. A. 2). There is another reason supporting this conclusion. A successful combination among a part of the producers to exclude others, even when not accompanied by an agreement fixing prices, puts into their hands collectively the power to control the supply and with it the price. The fact that that power is not at the moment

exercised is no assurance that it may not be; if the effort succeeds and the combination is not disrupted, it may at [fol. 4680] any time be used, and there will then be no protection to the consumer.

Finally, it is of no consequence that the Guild does not supply the whole market for women's dresses; it aims at a monopoly however small its share of total sales. The reason is as follows. Although all dresses made after one design are fungibles, the different designs themselves are not fungibles. Each has its own attraction for buyers; each is unique, however trifling the basis for preferring it may be. Hence to attempt to gather to oneself all possible reproductions of a given design is to attempt to create a monopoly, as at once appears from the fact that a copyright for it—and *a fortiori* a design patent upon it—would be ranked as a monopoly. It is true that the sanction of that monopoly may be very weak; it depends upon the design's attractions above other designs, often not a very important margin of advantage. But the same is true of nearly all monopolies, for there are substitutes for most goods. As to each design therefore the Guild is seeking to establish a monopoly; and it is unimportant whether its gross sales are large or small, as compared with those of all women's dresses. For these reasons the combination was unlawful *per se*; the Commission was right in refusing to hear any evidence in its excuse, for it could have no excuse; the case is the same as *Millinery Creators' Guild v. Federal Trade Commission*, *supra* (109 Fed. (2) 175). Similarly the conduct of the examiner in shutting off cross-examination and the like—of which the Guild urgently complains—was proper; the case stood admitted, no defence was possible; indeed, so far as the Guild has any complaint whatever, it is that the hearings against it were drawn out most unnecessarily.

In 1937 the First Circuit did indeed affirm a decree which dismissed a bill in equity brought against the Guild by a retailer. *Wm. Filene's Sons Co. v. Fashion Originators Guild*, 90 Fed. (2) 556. We cannot find any distinction [fol. 4681] between the facts as there found and those which we feel bound here to take as though proved; and it follows from what we have already said that we are unwillingly forced to a different conclusion. That difference lies in the fact that, as we have said, we do not understand that a court will inquire into whether a combination benefits an industry when the means used are themselves unlawful; and that

to try altogether to exclude others from manufacturing what they are free to make, is an unlawful means. If on the other hand the First Circuit believed that the "originator" of a design has an interest to protect greater than one who has merely appropriated an existing design at his own labor and expense, we cannot agree as to that either.

The order will therefore be affirmed, except that—as in *Butterick Publishing Co. v. Federal Trade Commission*, *supra*, 526, 527 (85 Fed. (2) 522)—it will not be understood to apply to cases in which a retailer knowingly buys dresses, access to the design of which has been procured (1) by fraud, bribery or any other crime, (2) through some breach of contract, or (3) before the design has by "publication" come into the public demesne.

Order affirmed.

[fol. 4682] IN THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE SECOND CIRCUIT

FASHION ORIGINATORS GUILD OF AMERICA, INC., et al.,  
Petitioners,  
against

FEDERAL TRADE COMMISSION, Respondent

On Petition to Review and Set Aside an Order of the  
Federal Trade Commission

Petition for Rehearing and Brief in Support Thereof

Weisman, Quinn, Allan & Spett, Attorneys for Petitioners.

Milton C. Weisman, Melvin A. Albert, of Counsel.

[fol. 4683] IN THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE SECOND CIRCUIT

FASHION ORIGINATORS GUILD OF AMERICA, INC., et al.,  
Petitioners,  
against

FEDERAL TRADE COMMISSION, Respondent

On Petition to Review and Set Aside an Order of the  
Federal Trade Commission

Petition for Rehearing

Come now the petitioners and by their attorneys respectfully petition this Honorable Court for a rehearing for the

reason that this Court erred in its decision affirming, as modified, the order of the Federal Trade Commission and upon such rehearing for a reversal of said order or for further modification thereof for the following reasons:

1. The Court erred in concluding as a matter of fact that the program of the Fashion Originators Guild of America, Inc., established or tended to establish a monopoly in members of the Fashion Originators Guild of America, Inc., in their designs or in the market for the sale thereof.

[fol. 4684] 2. If the Court's conclusion as to the existence of a monopoly or tendency to monopolize is correct, nevertheless such monopoly as may be held to exist in the instant case is not one which comes within the condemnation of the antitrust acts, since concededly it accomplishes none of the obnoxious results which prompted the enactment of the law against monopolies.

3. Even if the program results in a monopoly or a tendency to monopolize, members of the petitioners have an absolute property right which they may be permitted to preserve since such property right, to wit, the right to continue in business, was threatened by an admitted evil which was accomplishing the destruction, not only of the business of manufacturers, but likewise that of retailers, and which evil was depressing conditions of labor and creating confusion and lack of confidence in the minds of consumers.

4. The Court condemned only so much of the program as creates or tends to create a monopoly. Many features of the program restrained by the cease and desist order have no such effect and involve solely the relationship of members of the Guild to each other. Therefore, so much of the cease and desist order as restrains members of the Guild from indulging in activities involving solely the voluntary action of members of the Guild and embracing only legitimate trade association activities and resulting in no monopolistic menace should be reversed. Such items of the cease and desist order are the following:

"9. Inducing, coercing, constraining or compelling the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to contribute to the cost of advertisements of retail dealers in women's garments" (fol. 427).

"10. Inducing, coercing, constraining or compelling the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to participate in fashion shows sponsored by retailers" (fol. 428).

[fol. 4685] "11. Fixing or attempting to fix, or dictate, the amount of discounts to be allowed by the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to retail dealers in women's garments" (fol. 428).

"12. Inducing, coercing, constraining or compelling the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to permit retailers to participate with them in promoting fashion shows unless the merchandise used therein has been actually purchased and delivered to such retailers" (fol. 429).

"13. Employing auditors, accountants or others to audit the books of the members of the Fashion Originators Guild of America, Inc., for the purpose of ascertaining whether they are violating or have violated any of the policies, regulations or programs of the Fashion Originators Guild of America, Inc., and from imposing or collecting fines or penalties or suspending or expelling from membership in the Fashion Originators Guild of America, Inc., those members who violate the policies, regulations or programs of the Fashion Originators Guild of America, Inc." (fol. 429):

5. Regardless of the existence or non-existence of a property right in design; regardless of the right to justify the program as aimed at an industry destroying evil; and since such rule does not create or tend to create a monopoly Guild members may collectively refuse to deal with retailers who conduct their business in violation of law, local or state (Wolfenstein v. Fashion Originators Guild of America, Inc., 244 N. Y. A. D. 656). Therefore, so much of the cease and desist order as restrains members of the Guild from refusing to sell at retail or to persons conducting their business in residences, residential quarters, hotels or apartment buildings (fol. 426) should be reversed.

6. Although the Court has indicated that the members of the Guild presently engage in none of the illegal practices [fol. 4686] condemned by law. (Standard Oil v. United

States, 221 U. S. 1), in that the program does not result in the fixation of prices, a limitation of production or a deterioration of quality, nevertheless the program has been condemned. By reason of the overwhelming equities in favor of the petitioner's program in the attempt to eliminate a conceded evil which was threatening to destroy the industry; since the fairness and reasonableness of the program in operation is not contested and since the benefits resulting to manufacturers, retailers, labor and consumer are uncontradicted, it is respectfully urged that the Court should adopt the procedure enunciated in *Appalachian Coals v. United States*, 288 U. S. 344, and if it is apprehensive of potential future injury resulting from the Guild program, preserve the right of the Commission to assail such future conduct on the instant record and permit such additional evidence to be adduced as in the opinion of the Commission may be requisite.

Wherefore, your petitioners respectfully pray for a rehearing of their petition to review and set aside the order of the Federal Trade Commission and upon such rehearing for a reversal of said order in whole or in part, as requested.

Dated, August 5, 1940.

Weisman, Quinn, Allan & Spett, Attorneys for Petitioners, By Milton C. Weisman.

[fol. 4687] UNITED STATES CIRCUIT COURT OF APPEALS, FOR  
THE SECOND CIRCUIT

FASHION ORIGINATORS GUILD OF AMERICA, INC., et al.,  
Petitioners,  
against

FEDERAL TRADE COMMISSION, Respondent

Before L. Hand, Augustus N. Hand and Chase, Circuit  
Judges

Milton C. Weisman and Melvin A. Albert for the petitioners.

PER CURIAM:

Petition for rehearing denied.

L. H., A. N. H., H. B. C., Circuit Judges.

Filed August 12, 1940.

[fol. 4688] UNITED STATES CIRCUIT COURT OF APPEALS,  
SECOND CIRCUIT

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 12th day of August, one thousand nine hundred and forty.

Present: Hon. Learned Hand, Hon. Augustus N. Hand,  
Hon. Harrie B. Chase, Circuit Judges.

FASHION ORIGINATORS GUILD OF AMERICA, INC., et al.,  
Petitioners,

v.

FEDERAL TRADE COMMISSION, Respondent

A petition for a rehearing having been filed herein by counsel for the petitioners,

Upon consideration thereof, it is

Ordered that said petition be and hereby is denied.

D. E. Roberts, Clerk, by A. M. Bell, Deputy Clerk.

[fol. 4689] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. Fashion Originators Guild of America, Inc., et al. v. Federal Trade Commission. Order. United States Circuit Court of Appeals, Second Circuit. Filed August 12, 1940. D. E. Roberts, Clerk,

[fol. 4690]. IN THE UNITED STATES CIRCUIT COURT OF  
APPEALS FOR THE SECOND CIRCUIT

No. 16581

FASHION ORIGINATORS GUILD OF AMERICA, INC., et. al.,  
Petitioners,

v.

FEDERAL TRADE COMMISSION, Respondent

Notice

To: Messrs. Weisman, Quinn, Allan & Spett,  
1450 Broadway, New York, N. Y.

GENTLEMEN:

Please Take Notice, that the proposed decree, a copy of which is hereunto annexed, is being transmitted to D. E.

Roberts, Esq., Clerk of the United States Circuit Court of Appeals for the Second Circuit, at the United States Court House, Foley Square, New York City, for submission to said Court in accordance with the usual practice.

W. T. Kelley, Chief Counsel,  
Federal Trade Commission.

Receipt of a copy of the above notice and draft of decree annexed hereunto, is hereby acknowledged this — day of —, 1940.

Weisman, Quinn, Allan & Spett, Attorneys for the  
Petitioners.

[fol. 4691] IN THE UNITED STATES CIRCUIT COURT OF AP-  
PEALS FOR THE SECOND CIRCUIT

No. 16581

FASHION ORIGINATORS GUILD OF AMERICA, INC., et al.,  
Petitioners,

v. .

FEDERAL TRADE COMMISSION, Respondent

Decree

The petitioners herein, having filed with this Court on, to-wit, April 6, 1939, their petition to review and set aside an order to cease and desist issued by the Federal Trade Commission, respondent herein, under date of February 8, 1939, under the provisions of Section 5 of the Federal Trade Commission Act, and a copy of said petition having been served upon the respondent herein, and said respondent having thereafter certified and filed herein, as required by law, a transcript of the entire record in the proceeding lately pending before it, in which said order to cease and desist was entered, including all the evidence taken and the report and order of said respondent; and the matter having been heard by this Court on briefs and argument of counsel, and this Court thereafter, on July 22, 1940, having rendered its decision affirming said order of the respondent, with the exception noted at the end hereof;

Now, Therefore, it is Hereby Ordered, Adjudged and Decreed that said order to cease and desist issued by the Federal Trade Commission, respondent herein, under date of February 8, 1939, be, and the same hereby is, affirmed, with the exception noted at the end hereof;

And it is Hereby Further Ordered, Adjudged and Decreed that the petitioners, Fashion Originators Guild of America, Inc., its officers,

Maurice Rentner, President, Treasurer and Member of its Board of Governors.

Herbert Sondheim, First Vice-President and Member of its Board of Governors.

Charles Gumprecht, Second Vice-President and Member of its Board of Governors.

J. A. Livingston, Treasurer and Member of its Board of Governors.

[fol. 4692] Albert M. Post, Executive Director.

James M. Golby, Executive Secretary.

and their successors;

William Bass,  
Louis J. Brenner,  
Jo Copeland,  
William Fox,  
Joseph Halpert,  
Charles Miller,  
Kallman Carmel,  
David M. Goodstein,

David Bender,  
Theodore Racoosin,  
Charles Lang,  
Samuel Kass,  
D. Eli Lahm,  
Louis M. Wersba,  
Leo Del Monte,  
Matthew Kane,

Louis J. Mallas,

and their successors, members of its Board of Governors;

Austin M. DeLisser, executive secretary of the Textile Merchants Group of the Fashion Originators Guild of America, Inc., and E. W. Freudenberg, Samuel Levine and E. E. Meyer, and their successors, Members of its Steering Committee, and the following named members of the Fashion Originators Guild of America, Inc.

Aldrich & Malvin, Inc.	Bender & Hamburger, Inc.
Charles Armour & Bros., Inc.	Brenner, Joseph & White, Inc.
Joseph & Ben Barnett, Inc.	Hattie Carnegie, Inc.
William Bass Dress Corp.	Lewis Cohn, Inc.

- David Crystal, Inc.  
 Anna Duke, Inc.  
 Feigenbaum & Adelsohn, Inc.  
 Herman Floersheimer &  
 Bro., Inc.  
 Louise Barnes Gallagher,  
 Inc.  
 Garfinckel & Siegel, Inc.  
 A. Goodman & Co., Inc.  
 Julius Grossman & Fred  
 Greenberg Dress Co., Inc.  
 Charles Groden, Inc.  
 Max Heit Dress Corp.  
 Myron Herbert & Charles  
 Cooper, Inc.  
 Virginia Hume & Gold, Inc.  
 Kallman & Morris, Inc.  
 Samuel Kass Gowns, Inc.  
 Charles Kondazian & Papaz,  
 Inc.  
 Charles Lang, Inc.  
 Lenkowsky Modes, Inc.  
 Milton Altmark, Inc.  
 Arons, Bernstein & Arons,  
 Inc.  
 Rose, Barrack & LaM, Inc.  
 Herman Beispel, Inc.  
 Blotta & Conti, Inc.  
 Brenner, Morris, Inc.  
 Clifford Salkin, Inc.  
 Jo Copeland, Inc.  
 Dolces Dressing, Inc.  
 Eta, Inc.  
 Pauline Fields, Inc.  
 Henry Ganz, Inc.  
 Gardner & Schwartz, Inc.  
 Ed Garrick & Co., Inc.  
 Joseph Greenberg-Bettina,  
 Inc.  
 Joseph Halpert, Inc.  
 Jack Herzog & Bros., Inc.  
 E. A. Jackson-Bienard, Inc.  
 Kaplan & Moskowitz, Inc.  
 Kiviette, Inc.  
 Kornhauser Gowns, Inc.  
 LaRue Dresses, Inc.  
 Mary Lee Frocks, Inc.  
 Mary Liotta, Inc.  
 H. Milgrim & Bros., Inc.  
 Jennie Moskowitz, Inc.  
 Nomis Dress Co., Inc.  
 Pattulo Modes, Inc.  
 [fol. 4693]  
 Ben Reig, Inc.  
 Nettie Rosenstein Gowns,  
 Inc.  
 Rusolph Gowns, Inc.  
 J. M. Silverman Dresses,  
 Inc.  
 Herbert Sondheim, Inc.  
 Frank Starr Friedlander,  
 Inc.  
 Suttre-Fox, Inc.  
 John Traina, Inc.  
 Fred A. Block, Inc.  
 H. N. Fried  
 Lang-Kohn Mfg. Co.  
 Robinson Bros., Inc.  
 Dartmoor Coat Co., Inc.  
 Ben Gershel & Co., Inc.  
 Ben Ginsberg, Inc.  
 Aaron Goldstein Co., Inc.  
 Grossman & Spiegel, Inc.  
 Monte, Sans & Pruzan, Inc.  
 Louis Kallish  
 Ashley Frocks, Inc.  
 Joseph M. Duberman  
 Joanne, Jr., Zinn Bros., Inc.  
 Louise Mulligan, Inc.  
 M. A. Litvin, Inc.  
 Germaine Monteil, Inc.  
 Nanty Frocks, Inc.  
 Paul Parnes, Inc.  
 Perles & Gilbert, Inc.  
 Maurice Rentner, Inc.  
 James J. Rothenberg, Inc.  
 Ruffolo Bros., Inc.  
 Somay, Inc.

Spectator Sports, Inc.  
 Straus-Miller, Inc.  
 A. Traina Gowns, Inc.  
 B. G. Garment Co., Inc.  
 S. Eisenberg  
 Junior Guild Frocks, Inc.  
 Matthew Kadetsky Co.  
 Carmel Bros., Inc.  
 Deutsch, Wersba & Coppola,  
 Inc.  
 Del Monte Hickey Co., Inc.  
 Louis Goldstein Company,  
 Inc.  
 Philip Mangone & Co., Inc.  
 Zuckerman & Kraus, Inc.  
 Max Rosenbluth.  
 J. H. Horwitz  
 Jane Junior Dresses, Inc.  
 Junior League Frocks, Inc.  
 Ira Rentner-Miller, Inc.  
 Amrein Freudenberg & Co.,  
 Inc.  
 Bloomsburg Silk Mill, Inc.  
 Brueck & Richards, Inc.  
 Chatillon, Mouly, Roussel,  
 Inc.  
 Combier & Co., Inc.  
 Condurier, Frustus & De-  
 vigne, Inc.  
 Silk Guild of America, Inc.  
 Empire Silk Co. (Inc.)  
 The Forstman Woolen Co.  
 (Inc.)  
 Théodore J. Gallagher, Inc.  
 L. J. Hyams  
 Kandelaft Silks, Inc.  
 Maginnis & Thomas, Inc.  
 Menke Kaufman & Co.  
 Wm. C. Openhym  
 L. & E. Stirn, Inc.  
 Bianchini, Ferier, Inc.  
 Sidney Blumenthal & Co.,  
 Inc.  
 Case & Co., Inc.

Cheney Bros., Inc.  
 Descours, Genthon, Inc.  
 Croydon Fabrics, Inc.  
 F. DuCharne Silk Co., Inc.  
 Cohn-Hall-Marx Co., Inc.  
 Frank Associates, Inc.  
 Hess, Goldsmith & Co., Inc.  
 Jane Hyams Lace Net Im-  
 porting Co., Inc.  
 H. B. Mallinson & Co., Inc.  
 Onondaga Silk Co.  
 Remond-Holland, Inc.  
 Stunzi Sons Silk Co., Inc.  
 Susquehanna Silk Mills  
 (Inc.)  
 J. A. Wagenbauer, Inc.  
 Wechaler Silk Corp.  
 J. J. & N. Blackstone, Inc.  
 Ellen Lace & Embroidery  
 Co., Inc.  
 Ikle Freres & Co., Inc.  
 Lido Embroidery, Inc.  
 Record Lace & Embroidery  
 Co., Inc.  
 Walter Tobler  
 Franz Hoenig  
 Schwarzenbach, Huber, Inc.  
 Wahnetah Silk Co., Inc.  
 Zellinger & Schreth, Inc.  
 Dutschler, Trull & Justin,  
 Inc.  
 [fol. 4694]  
 L. H. Hollander  
 Herbert Lehman, Inc.  
 Maison France, Inc.  
 Swiss Novelty Embroidery  
 Co., Inc.  
 Sol Wolfman, Inc.  
 Adler & Adler, Inc.  
 David M. Goodstein, Inc.  
 Joseph Levay, Inc.  
 David N. Lowenthal & Son,  
 Inc.

Charles W. Nudelman, Inc.	Friedman Dress Co., Inc.
Theodore Rosenberg	International Dress Co., Inc.
Star Maid Dresses, Inc.	Joe Levine Dress Co., Inc.
Townley Frocks, Inc.	C. H. D. Robbins Co., Inc.
Aywon Dress Co., Inc.	Shoila-Lynn Dresses, Inc.
Daytime Frocks, Inc.	David S. Westheim Corp.
Harry Frank	Bernard Appel, Inc.
Goláman Frocks Co., Inc.	Bonn Ray Dance Frocks, Inc.
Jomark Dresses, Inc.	Casino Dresses, Inc.
Parisian Mfg. Co., Inc.	Dalton Frocks, Inc.
Rosen Bros. Frocks, Inc.	Dresden Dress Co., Inc.
Silver Dresses, Inc.	Franklin Dress Co., Inc.
Witlin & Schneider, Inc.	Alexander S. Gross, Inc.
Anderman-Bob Burns, Inc.	Lyla Modes, Inc.
Gráce Ashley,	E. N. Marcus
Capri Frocks, Inc.	Parnis-Levinson, Inc.
Cohen-Tunick, Inc.	Radiant Dress Co., Inc.
Sam Davidson, Inc.	L. C. Rosenblatt, Inc.
Fashion Wear Dress Co.,	Stern & Goldberg, Inc.
Inc.	Valroy, Inc.
Ginsburg & Abelson, Inc.	Bretter & Sussman, Inc.
Lee Claire Costumes, Inc.	Flo-Frocks, Inc.
Lyttle Bros., Inc.	George Hess Co., Inc.
Matty Moskowitz, Inc.	Michael K. plan
Patricia Perkins, Inc.	Wein Frocks, Inc.
Reich-Goldfarb & Co., Inc.	Argosy Dresses, Inc.
Schultze-Zuch, Inc.	Garland Dress Co., Inc.
Will Steinman, Inc.	Samuel Lipman
Phil Zahn & Co., Inc.	Julius Lipman
Campus Modes, Inc.	Rosenthal & Kallman, Inc.
Davidow, Inc.	Junior Fashion Guild, Inc.
Kane-Weill, Inc.	M. Kaplan
J. A. Livingston, Inc.	Abbate-Swift, Inc.
Mutual Rosenbloom Corp.	Cecile Dance Frocks, Inc.
Zoltan Rosenberg	B. Tobias, Inc.
Sport Kraft, Inc.	Herman Lipman
San Steinberg & Co., Inc.	Marie-Lynn Dance Frocks,
L. & D. Beilinson, Inc.	Inc.
F. E. D. Dress Co., Inc.	

[fol. 4695] and all present and future members, their agents, servants and employees, each and all,

Cease and Desist from directly or indirectly, jointly or severally, entering into or carrying out any understanding,

arrangement, agreement, combination or conspiracy, with each other or with any other person or persons, association or corporation, to hinder or suppress competition in the interstate sale and distribution of women's garments or textiles used in the manufacture thereof; or to hinder or suppress competition among manufacturers of said garments or textiles in the interstate sale and distribution of said products to retail dealers, and particularly from directly or indirectly, in pursuance of any such understanding, arrangement, agreement, combination or conspiracy, from:

1. Inducing, coercing, constraining or compelling manufacturers of women's garments to confine their purchases of textiles to those textile manufacturers who register their designs in the Industrial Design Registration Bureau of the National Federation of Textiles, Inc.

2. Inducing, coercing, constraining or compelling women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to buy from textile manufacturers who sell to retail dealers in women's garments who enter into agreements with manufacturers to manufacture styles, or to refuse to sell to such retail dealers as resort to such practices.

3. Inducing, coercing, constraining or compelling textile members of the Fashion Originators Guild of America, Inc., to refuse to sell textiles to women's garment manufacturers who do not agree to purchase only from textile manufacturers who register their designs with the Industrial Design Registration Bureau of the National Federation of Textiles, Inc.

4. Inducing, coercing, constraining or compelling women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to sell their merchandise to retail dealers who do not agree to cooperate with, or who do not cooperate with, the Fashion Originators Guild of America, Inc., by refusing to buy women's garments declared by it to be copies of original registered designs of its members and registered by them in the registration bureau of said petitioner, Fashion Originators Guild [fol. 4696] of America, Inc., and by returning to the manufacturers thereof any such copies which may be found in

their stock, and by stamping all their orders for merchandise with the warranty clause stamp of the Fashion Originators Guild of America, Inc., which recites that the seller warrants that the garments ordered and sold are not copies of styles originated by members of the Fashion Originators Guild of America, Inc., and that the purchaser reserves the right to return any merchandise which is not as warranted.

5. Inducing, coercing, constraining or compelling the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to confine their sales in Chicago, Illinois; Minneapolis, Minnesota, and Baltimore, Maryland, to retail dealers in women's garments who are members of the respective petitioner local guilds of those cities, to-wit: Michigan Avenue Guild of Chicago, Minneapolis Fashion Guild and Ladies' Ready-to-Wear Guild of Baltimore, Inc., or those who conform to the standards and regulations of such petitioner local guilds.

6. Inducing, coercing, constraining or compelling the women's garment-manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to conduct off-price promotion sales, or clearance sales in Chicago, Illinois; Minneapolis, Minnesota, and Baltimore, Maryland, prior to the dates fixed for such sales by the respective petitioner local guilds, to-wit, Michigan Avenue Guild of Chicago, Minneapolis Fashion Guild and Ladies' Ready-to-Wear Guild of Baltimore, Inc.

7. Inducing, coercing, constraining or compelling the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to sell at retail, or to persons conducting their business in residences, residential quarters, hotels or apartment buildings.

8. Inducing, coercing, constraining or compelling the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to exhibit or sell their merchandise to retail dealers who fail or refuse to sign the Declaration of Cooperation of the Fashion Originators Guild of America, Inc., or who, having signed same, fail or refuse to comply with the conditions thereof.

[fol. 4697] 9. Inducing, coercing, constraining or compelling the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to

contribute to the cost of advertisements of retail dealers in women's garments.

10. Inducing, coercing, constraining or compelling the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to participate in fashion shows sponsored by retailers.

11. Fixing or attempting to fix, or dictate, the amount of discounts to be allowed by the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to retail dealers in women's garments.

12. Inducing, coercing, constraining or compelling the women's garment manufacturing members of the Fashion Originators Guild of America, Inc., to refuse to permit retailers to participate with them in promoting fashion shows unless the merchandise used therein has been actually purchased and delivered to such retailers.

13. Employing auditors, accountants or others to audit the books of the members of the Fashion Originators Guild of America, Inc., for the purpose of ascertaining whether they are violating or have violated any of the policies, regulations or programs of the Fashion Originators Guild of America, Inc., and from imposing or collecting fines or penalties, or suspending or expelling from membership in the Fashion Originators Guild of America, Inc., those members who violate the policies, regulations or programs of the Fashion Originators Guild of America, Inc.

It is Further Ordered, that the petitioner Michigan Avenue Guild of Chicago,—

Guy L. Ederheimer,  
Edward A. Fletcher,  
Harry Blum,  
Louis Gossert,  
A. E. Levitt,  
Bernard Rose,  
Herman Friedman,  
Frank L. Cole,

L. R. Pearson,  
Leo Bramson,  
M. E. Greenbaum,  
Sally K. Greenbaum,  
E. R. Lindburg,  
George M. Gleason,  
Clarence A. Powell; and  
Elise A. Runyan,—

its officers and members of its Board of Directors and their successors, its members and all future members;

The petitioner, Minneapolis Fashion Guild, Roy H. Bjorkman, its Executive Secretary, and his successors, its officers and members of its Board of Directors and their successors, its members and all future members;  
 [fol. 4698] The petitioner, Ladies Ready-to-Wear Guild of Baltimore, Inc.,

Charles G. Hutzler,  
 C. F. Roycroft,  
 William Pollock,  
 Martin B. Kohn,  
 J. E. Ellington,

Allen S. Metzger,  
 Fred H. Alperstein,  
 Lester Bonwit,  
 Albert D. Slesinger,  
 Sam J. Schleisner, and

Hal W. Kenaston;

its officers and members of its Board of Directors, and their successors, its members and all future members:

Cease and Desist from directly or indirectly, jointly or severally, entering into or carrying out any understanding, arrangement, agreement, combination or conspiracy, with each other or with any other person, or persons, association or corporation:

(a) To refuse to purchase any of their requirements from manufacturers of women's garments who are not members, or who do not conform to the standards, ethics or regulations of the Fashion Originators Guild of America, Inc.;

(b) To comply with the requirement of the Fashion Originators Guild of America, Inc., prohibiting the purchase or sale of women's garments declared by it to be copies of styles or designs registered as original by its members in its design registration bureau;

(c) To comply with the requirement of the Fashion Originators Guild of America, Inc., that any such declared copies as are mentioned in sub-paragraph (b), that are found in their stock shall be removed from sale and returned to the manufacturer thereof;

(d) To comply with the requirement of the Fashion Originators Guild of America, Inc., that all orders for women's garments shall be stamped with its warranty clause which recites that the seller warrants that the garments are not copies of styles or designs registered with the Fashion Originators Guild of America, Inc., as original by its members, and reserving the right in the purchaser to return any merchandise which is not as warranted;

(e) To comply with the requirement of the Fashion Originators Guild of America, Inc., that purchases of women's garments be made only from its members in good standing or from manufacturers who observe its standards, ethics, policies and regulations.

[4699] It is Further Ordered, that the petitioner National Federation of Textiles, Inc., Peter Van Horn, its President, Irene L. Blunt, its Secretary, and their successors, all other of its officers and their successors, members of its Board of Directors and their successors, and its members and all future members, their agents, servants and employees:

Cease and Desist from directly or indirectly, jointly or severally, entering into, or carrying out, any understanding, arrangement, agreement, combination or conspiracy, with each other or with any other person, persons, association or corporation,—

To publish in trade journals, newspapers, or in any other manner, that manufacturers of women's garments have entered into an agreement not to purchase textiles from manufacturers thereof who do not register their designs in the Industrial Design Registration Bureau of the National Federation of Textiles, Inc.

It is Further Ordered, that petitioners Marshall Field & Company, Allied Stores Corporation, the Lindner Co'y, Joseph Horne Company, Mandel Brothers, Inc., John Wanamaker, Philadelphia, Lit Brothers, Inc., Bullock's, Inc., The Emporium Capwell Corporation and J. L. Hudson Co., their officers, members of their Boards of Directors, and their successors, their agents, servants and employees, and approximately 12,000 retail dealers in women's garments throughout the United States who have signed Declarations of Cooperation with petitioner Fashion Originators Guild of America, Inc., whom it is impracticable to name herein, and of whom the petitioners specifically named in this paragraph are representative:

Cease and Desist from, directly or indirectly, jointly or severally entering into, or carrying out any understanding, arrangement, agreement, combination or conspiracy with each other, or with any other person or persons, association or corporation:

(a) To refuse to purchase any women's garments from manufacturers thereof who are not members of the Fashion

Originators Guild of America, Inc., or who do not conform to its standards, ethics and regulations;

(b) To comply with the requirement of the Fashion Originators Guild of America, Inc., not to purchase or sell women's garments declared by it to be copies of styles or designs registered in its design registration bureau by its members;

(c) To comply with the request of the Fashion Originators Guild of America, Inc., that no women's garments be purchased from manufacturers declared by it to be confirmed copyists;

[fol. 4700] (d) To comply with the requirement of the Fashion Originators Guild of America, Inc., that any women's garments found in their stocks which have been declared by it to be copies of registered styles and designs of its members be removed from sale and returned to the manufacturer thereof.

(e) No part of the foregoing order shall apply to cases in which a retailer buys dresses whose style or design he knows the dressmaker to have copied without consent from an "unpublished" style or design; the privilege so conferred shall, however, cease as soon as the style or design in question shall be "published"; after which the retailer shall be free to buy dresses made after it, no matter by what means the dressmaker originally obtained access to it.

And It Is Hereby Further Ordered, Adjudged and Decreed that the petitioners as above set forth shall, within ninety (90) days after the entry of this decree, file with the Federal Trade Commission a report in writing setting forth the manner and form in which they have complied with this decree.

By the Court:

\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, Circuit Judges.

August 24, 1940.

[fol. 4701] Endorsed: In the United States Circuit Court of Appeals for the 2nd Circuit. Fashion Originators Guild of America, Inc., et al., Petitioners; v. Federal Trade Commission, Respondent. No. 16581. Decree. United States Circuit Court of Appeals, Second Circuit. Filed August 26,

1940. D. E. Roberts, Clerk. W. T. Kelley, Chief Council  
for Federal Trade Commission.

[fol. 4702] UNITED STATES OF AMERICA,  
Southern District of New York:

I, D. E. Roberts, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1a to 32a and 1 to 4701 inclusive in 6 volumes, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Fashion Originators Guild of America, Inc., et al., Petitioners, against Federal Trade Commission. Respondent, as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit this third day of September, in the year of our Lord one thousand nine hundred and forty, and of the Independence of the said United States the one hundred and sixty-fifth.

D. E. Roberts, Clerk. (Seal.)

[fol. 4703] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 25, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted, and the case is assigned for argument immediately following No. 251.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.